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NOMINATION OF VICTOR STELLO, JR., TO BE THE ASSISTANT SECRETARY OF ENERGY FOR DEFENSE PROGRAMS

HEARINGS

BEFORE THE

COMMITTEE ON ARMED SERVICES
UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

NOMINATION OF VICTOR STELLO, JR., TO BE THE ASSISTANT
SECRETARY OF ENERGY FOR DEFENSE PROGRAMS

NOVEMBER 15, 16, 20; DECEMBER 19, 1989

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NOMINATION OF VICTOR STELLO, JR., TO BE THE ASSISTANT SECRETARY OF ENERGY FOR DEFENSE PROGRAMS

WEDNESDAY, NOVEMBER 15, 1989

U.S. Senate,
Committee on Armed Services,
Washington, DC.

MORNING SESSION

The committee met, pursuant to notice, at 9:05 a.m., in room SR-253, Russell Senate Office Building, Senator Sam Nunn (chairman) presiding.

Committee members present: Senators Nunn, Exon, Levin, Kennedy, Bingaman, Dixon, Glenn, Gore, Wirth, Shelby, Warner, Thurmond, Cohen, Wilson, Gorton, and Lott.

Committee staff members present: Arnold L. Punaro, staff director, Andrew S. Effron, general counsel; Marie Fabrizio Dickinson, assistant chief clerk.

Professional staff members present: Sherri Wasserman Goodman, William E. Hoehn, Jr., David S. Lyles, and Michael J. McCord.

Minority staff members present: Patrick A. Tucker, minority staff director and counsel; Romie L. Brownlee, deputy staff director for the minority; George W. Lauffer, and John E. Mansfield, professional staff members.

Staff assistants present: Cindy Pearson, Debra A. Rice, and Mickie Jan Wise.

Committee members' assistants present: Jeffrey B. Subko, assistant to Senator Exon; William J. Lynn, assistant to Senator Kennedy; John Gerhart and Charles C. Smith, assistants to Senator Dixon; Leon S. Fuerth, assistant to Senator Gore; Jefferson B. Seabright, assistant to Senator Wirth; Terrence M. Lynch, assistant to Senator Shelby; C. Richard D'Amato, assistant to Senator Byrd; James M. Bodner, assistant to Senator Cohen; Dudley L. Carlson, assistant to Senator Wilson; Jack D. Crouch II, assistant to Senator Wallop; Robert M. Soofer, assistant to Senator Gorton; and Charles Pearcy, assistant to Senator Lott.

OPENING STATEMENT OF SENATOR SAM NUNN, CHAIRMAN

Chairman Nunn. The committee meets this morning to consider the nomination of Victor Stello, Jr., to be the Assistant Secretary of Energy for Defense Programs. I want to welcome Mr. Stello to the committee this morning.

We would also like to welcome Mr. Stello's family, his wife, Esther, and children Chester, Vanessa Flynn, and Lisa. We are glad to have you here this morning.

Mr. Stello has been nominated for a key position. The Assistant Secretary of Energy for Defense Programs is statutorily responsible for the "national security functions which relate to management and implementation of the nuclear weapons program and other national security functions involving nuclear weapons research and development."

The Assistant Secretary for Defense Programs is responsible for overseeing the operations of the Nation's 17 defense nuclear facilities. The Defense Programs accounts for over 60 percent of the entire Department of Energy budget. Almost all of the production facilities in the nuclear weapons complex have reached the end of their useful life and need to be modernized or replaced. There are serious safety, health, and environmental issues that must be properly addressed and managed if the facilities are to continue to operate. They certainly need to continue to operate in some fashion for our national security purposes. Admiral Watkins has said this on a number of occasions, and I think it is very, very important. The safety, health, and environmental issues must be of equal concern with the production requirements. I believe that reflects the view of this committee.

In a letter to the President dated January 25, 1989, from myself and Senators Warner, Exon, and Thurmond, we expressed the qualification standards we believe are important for the Assistant Secretary of Energy for Defense Programs just as we had expressed similar standards for Defense Department nominees referred to the committee last fall. In the letter relating to the Department of Energy Defense Programs capabilities that we felt were desired and necessary, we stated, quoting from the letter of January 25, "The nominee for Assistant Secretary for Defense Programs must possess extensive experience and expertise in the process of planning, designing, producing, and managing our nuclear deterrent.

"The nominee also should have an understanding of and appreciation for safety and environmental matters. During the transition to a revitalized weapons complex, care must be taken to ensure that the existing system continues to protect the national security and the health and the safety of the American people.

"Finally, it is clear that even the most capable nominee will not succeed unless he or she commands the complete trust and support of the senior management of the Department of Energy, your administration as a whole, and Congress."

I ask unanimous consent that a copy of this letter be entered into the record. Without objection, it will be so entered.

[The information referred to follows:]

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC, January 25, 1989.

The PRESIDENT,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: In a letter to you from Senators Nunn and Warner dated October 28th, qualifications standards were proposed to guide consideration by the Committee on Armed Services of persons nominated by the President for civilian positions in the Department of Defense. These standards are also applicable to persons nominated for senior positions in the Department of Energy with responsibility for overseeing and managing the nuclear weapons complex. Specifically, the position of Assistant Secretary of Energy for Defense Programs, over which our Committee has jurisdiction, deserves special consideration.

The challenges facing your Administration and the Assistant Secretary for Defense Programs are indeed formidable. Despite extreme pressures on the national security budget, we must find ways to provide the additional resources necessary to begin the modernization, safer operation, and environmental restoration of the weapons complex. Equally formidable is the problem of restoring the public's confidence that the nation's production complex is being managed in a safe, environmentally sound, and cost-effective manner.

As the head of the organization responsible for the day-to-day management of the weapons complex, the position of Assistant Secretary for Defense Programs is critical to meeting these challenges. The individual selected for this position must reflect the priority and importance that meeting these challenges is accorded in your Administration.

The nominee for Assistant Secretary of Energy for Defense Programs must possess extensive experience and expertise in the process of planning, designing, producing, and managing our nuclear deterrent. The nominee also should have an understanding of and appreciation for safety and environmental matters, and be committed to working closely with the Assistant Secretary for Environment, Safety, and Health. Of no less importance is that the nominee possess the foresight and skills necessary to develop, defend, and implement plans for facility modernization, safety improvements, waste management, and environmental restoration in a time of fiscal austerity. During the transition to a revitalized weapons complex, care must be taken to ensure that the existing system continues to protect the national security and the health and safety of the American people. Finally, it is clear that even the most capable nominee will not succeed unless he or she commands the complete trust and support of the senior management of the Department of Energy, your Administration as a whole, and Congress.

The Committee will devote considerable attention to the qualifications, capabilities, and stature of your nominee for Assistant Secretary of Energy for Defense Programs, with emphasis on these areas of particular concern. We trust that you will share our view of the importance of the position and the challenges we jointly face in managing the nuclear weapons complex. The Committee looks forward to working with you to ensure effective leadership in this vital aspect of national security.

Sincerely,

SAM NUNN,
Chairman.
JOHN WARNER,
Ranking Minority Member.
J. JAMES EXON,
Chairman, Subcommittee on Strategic Forces and Nuclear Deterrence.
STROM THURMOND,
Ranking Minority Member, Subcommittee on Strategic Forces and Nuclear Deterrence.

Chairman NUNN. The committee has endeavored to consider this nomination as expeditiously as possible, given the timing of its submittal to the Senate and the long delays by the executive branch in submitting all the paperwork as well as our own schedule which has been very full this fall. The committee appreciates Mr. Stello's patience in this regard, as he is not responsible for these problems.

Mr. Stello's nomination was received in the Senate and referred to the committee on July 24, the day the Senate began debate on the Defense authorization bill. The August recess followed. When the Senate reconvened on September 6, the Armed Services Committee was in a long and difficult conference with the House on the Defense authorization bill. The conference was completed November 6, a little over 1 week ago. The committee had to prepare the conference report for floor action which starts, as a matter of interest, today at noon.

The committee procedures require the submittal by the nominee and the executive branch of various background material. The background paperwork required by the committee on Mr. Stello was not received until October 27, 1989, more than 2 months after he was nominated. In addition, the committee has still not received a number of important documents from the White House relative to this nomination. Also, the committee has not received Justice Department documents which were requested in writing by myself and Senator Warner in a letter dated September 21 to the White House Counsel. I request that copies of the correspondence relative to these documents be inserted in the record at the appropriate place.

[The information referred to follows:]

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC, September 21, 1989.

Mr. C. BOYDEN GRAY,
Counsel to the President,
The White House, Washington, DC.

DEAR MR. GRAY: We are writing to request copies of Department of Justice documents which have been brought to our attention in a letter received from Congressman Dingell concerning the nomination of Victor Stello to be the Assistant Secretary of Energy for Defense Programs.

Congressman Dingell's letter mentions a Department of Justice memorandum on an investigation of enforcement of Nuclear Regulatory Commission regulations at the Zimmer and Three Mile Island facilities and the "termination memorandum that describes the difficulties in prosecuting this case." Congressman Dingell also states that he has recently requested these documents himself. A copy of his letter is enclosed for your reference.

Please provide the Committee with these documents for use in our consideration of Mr. Stello's nomination, along with any other material relevant to the issues raised by Congressman Dingell.

Sincerely,

SAM NUNN,
Chairman.
JOHN W. WARNER,
Ranking Minority Member.

Enclosure.

THE WHITE HOUSE,
Washington, October 24, 1989.

Hon. SAM NUNN,
Chairman, Committee on Armed Services,
U.S. Senate, Washington, DC.

DEAR SENATOR NUNN: This is in response to your letter of September 21, 1989, co-signed by Senator Warner, in which you requested copies of Department of Justice documents concerning the nomination of Victor Stello to be the Assistant Secretary of Energy for Defense Programs.

I have requested the Department of Justice to locate the materials you identify and contact you directly with a reply.

Sincerely,

C. BOYDEN GRAY,
Counsel to the President.

Chairman NUNN. Admiral Watkins has requested the opportunity to introduce Mr. Stello, and we are pleased to have him here today. The committee should also be aware that there are several Members of Congress and other individuals who have asked to be heard with respect to this nomination. The committee will hear from all viewpoints and will examine all issues associated with the nomination.

The committee will schedule these additional hearings consistent with the Senate schedule, the need to pass our Defense bill, which begins at noon today in the Senate, consistent with our involvement in other defense appropriations debate, and consistent with other hearings the committee already has planned, including one tomorrow morning on the battleship *Iowa* explosion which has been planned for a long time.

Senator Warner and I, of course, have an awful lot of duties in this committee as well as every other member of the committee. We are both involved in the reconciliation conference as well as the intelligence conference, so there is a full platter.

I have talked to Senator Exon who chairs the Strategic Subcommittee that is in charge of a number of these very important matters, and he is going to be here this afternoon at 2 p.m. We will continue the hearings at 2 p.m. today.

We are hearing from Lech Walesa at the joint session at 11 a.m. this morning. We will need to adjourn this hearing at 10:45 a.m. We are not permitted to meet while the joint session is going on, and many people on this committee, including the chairman and I am sure the ranking member, need to be there. So we will continue this hearing until 10:45 a.m., at which time we will adjourn until 2 p.m. We will continue the hearing as long as Senator Exon is able to preside this afternoon. I will be here as much as possible, and I know Senator Warner will be here depending on what happens on the floor. Then it is our plan to continue again tomorrow afternoon when Senator Exon will be presiding. We will be hearing from some of the outside witnesses who have requested to be heard.

Mr. Stello has submitted written answers to the advance questions that I sent him on the responsibilities and policy aspects of his position. These answers were made available to the committee members as soon as they were received, and I would ask that these submissions be made a part of the record.

[The biographical data and information will follow at the end of the hearing record.]

Chairman NUNN. Senator Glenn, do you have a question?

Senator GLENN. I do, indeed. I was not aware that we did not have all the paperwork done. Do you have any indication when that will be completed, because these hearings are rather irrelevant until we have all the other documents in?

Chairman NUNN. I agree, but on the other hand, time is running out on this session, so we decided we had to go ahead and begin on this process in hopes that with the power and influence that Admiral Watkins has with the White House that he would be able to secure the rest of these papers as soon as possible. The Justice Department papers are the ones we need more than any. They are at the top of the list. The White House has a couple of letters which are important that we also need. I do not know why they have been so late.

Senator GLENN. Ordinarily, we use some of that background documentation as the basis for our questioning. If that is not available, I do not know what we are going to accomplish exactly.

Senator **Warner**. Senator, we have to practice a little concurrency in the hearings as we do in the production of our weapons system, so let us hope that we are more successful.

Senator **Exon**. Mr. Chairman, in that regard it seems to me that it should be made clear that I think we have most of the information that we would need.

Chairman **Nunn**. We have enough to ask questions.

Senator **Exon**. I think the committee would reserve the right before we have a vote on this if there is anything that comes up in the documents to follow which may require the witness to come back.

Chairman **Nunn**. That is right. I think we have a lot of the material. We probably have 90 percent of the material, but we do not know what we are missing in terms of what the Justice Department may send. I sent a letter which Senator Warner and I signed on September 21 to Boyden Gray, which I have previously asked to be made a part of the record.

We have a response from him dated October 24, 1989, saying, "This is in response to your letter of September 21 co-signed by Senator Warner in which you requested copies of the Department of Justice documents concerning the nomination of Victor Stello to be the Assistant Secretary of Energy for Defense Programs. I requested the Department of Justice to locate the materials you identified and contact you directly with a reply." That is what we have not yet heard from, so that is where we stand right now. Senator Warner.

Senator **Warner**. Thank you, Mr. Chairman. Mr. Chairman, I would like to ask that my statement be supplemented in the record.

Chairman **Nunn**. Without objection.

Senator **Warner**. I am just going to make a few general observations. I think every now and then in the hearing process of the Senate we ought to stop and figure out just why we are here. We are here because the Constitution gives the President the right to select those individuals he wishes to have advise him on key subjects.

He selected you, Admiral Watkins, to be the Secretary of Energy and you, in turn, acting on behalf of the President, can select those individuals who you believe can best serve you and in turn serve the President of the United States. That is what we are here for, and that decision process has been performed by the President.

The chairman is quite correct. The committee has had other duties, and we are here as quickly as we were able. I support the chairman 100 percent. I am optimistic that we can try to conclude this hearing within the time frame so that the Secretary of Energy can have some indication whether or not this deputy meets the qualifications as established by the Senate.

Again, we are going to give this nominee, as we do all nominees, every opportunity to present his case, and those who have opinions contrary to that of the President and the Secretary of Energy will be given full opportunity. So there is no effort to abbreviate the hearing.

It is most unusual, Mr. Chairman and members of the committee, for a cabinet officer to feel that he must come forward and support the President's nominee in person. As a matter of fact, I am searching my memory. In the 11 years I have been here, I am not sure I can recall a comparable situation. That is important, Admiral Watkins, because you made the decision to give your full faith and credit to this nominee, and we commend you for coming forward and being responsive to this committee on this nomination. I hope we avail ourselves of the opportunity with Admiral Watkins present this morning to ask any questions that we feel appropriate in connection with this nomination.

The essential thing that we have to help you with, Admiral, is to give you the tools and the people—and when I say "we," I mean the United States, the President, Congress and all of us—to provide for a safe and credible, credible in the eyes of the world and particularly the Soviet Union, production facility for all elements and components necessary to maintain a modernized nuclear arsenal. We need that not only for our security, but if we are going to make any progress in arms control, the Soviets have to understand that the commitment of the United States is fully behind such modernization as is necessary to work out those arms control arrangements.

We do not know what success the President will have. We wish him every success certainly in the START talks. I would hope that in the course of your presentation here this morning, that you touch on that point because I think we share that view. Without a safe and credible production facility, we lack credibility at the negotiating table. Do you agree with that fundamental proposition?

Secretary WATKINS. Yes, sir, I do.

Senator WARNER. Thank you. I have made my point. I thank the Chair.

[The prepared statement of Senator Warner follows:]

PREPARED STATEMENT OF SENATOR JOHN W. WARNER

Mr. Chairman, The President has nominated Mr. Victor Stello to manage the nation's nuclear weapons establishment: research, testing, materials production, weapons production, and waste management. Of these, the most time-critical and possibly the most difficult, will be the restart of the production reactors at Savannah River. The country that goes to the negotiating table at START without a complete and operating nuclear weapon production complex is playing poker with his hand face up. The Soviets will never have to worry about U.S. capability to sustain a rapid buildup of nuclear weapons. We won't be able to do it and they will know it. They will know with certainty that there is a ceiling to the number of weapons we will ever be able to build if START fails. In all our successfully completed arms negotiations, the other side could have no doubt that, failing a treaty, the United States had the will and capability to build weapons to any level we wished. But START will be different: the Soviets will know that no matter what we say, we cannot produce more nuclear weapons. That is the frightening concern if we do not get the nuclear weapons production complex whole again.

I might add that this precisely is the concern the Senate had about the Special Isotope Separation plant: without SIS the Soviets know for sure that above some limit the United States can never build another weapon because we have no plutonium source. With SIS we can go to the negotiating table with a healthy, operating nuclear weapon production complex.

Thank you, Mr. Chairman.

Chairman NUNN. Thank you very much, Senator Warner. Are there any other opening statements?

Senator EXON. I have an opening statement.

Chairman NUNN. Senator Exon and then Senator Thurmond.

Senator Exon. If you will allow me 3 minutes, Mr. Chairman, I will try to be brief. I do not make opening statements ordinarily on these nominations, but I think this is such a critical one I am going to take a few minutes.

The position of the Assistant Secretary of Energy for Defense Programs is one of the most critical positions not only within the Energy Department but the entire executive branch today, and I do not think that I have taken part in the consideration of a nominee of a President that is any more important than this one here this morning.

As chairman of the Senate Armed Services Subcommittee on Strategic Forces and Nuclear Deterrence, I have the responsibility of overseeing the nuclear weapons production complex along with my friend and colleague, Senator Thurmond from South Carolina. Today, the status of the complex, which is critical to our Nation's security, is in a disastrous condition. We are unable to produce the tritium needed to sustain our nuclear deterrent. We have an aging complex which must be modernized. Serious lapses in safety and responsible management have occurred. We are unable to handle the nuclear waste produced, and we face massive cleanup efforts whose breadth and scope we can only estimate at this time requiring $50 to $100 billion. All of these problems require simultaneous and certainly immediate attention.

It will be up to the Assistant Secretary of Energy for Defense Programs to take the lead in tackling these issues. The President has nominated Victor Stello to this task. Mr. Stello does have a technical background and a professional experience to assume this office, as I have studied his record. Many questions have been raised, however, regarding the suitability of this nominee. I hope that we will have a fair, open, and objective airing of these issues so that all sides can be heard. I will make my decision on this nominee after these proceedings have been completed.

Mr. Stello, I welcome you, and I look forward to your testimony. Of course, Mr. Secretary, we are always delighted to have you. I just want to echo the words of Senators Nunn and Warner. The fact that you have come here personally to back this nominee is impressive. Thank you, Mr. Chairman.

Chairman Nunn. Thank you very much, Senator Exon. I appreciate your leadership in this area. You have shown leadership and such responsibility and done it so well. Also, I thank you for being willing to preside this afternoon, and I will join you as much as possible. Senator Thurmond.

Senator Thurmond. Thank you, Mr. Chairman. I want to extend a warm welcome to Mr. Victor Stello, the President's nominee to be the Assistant Secretary of Energy for Defense Programs. I would also like to thank you, Mr. Chairman, for taking up this nomination at this critical time.

As you know, the Department of Energy is planning to restart the nuclear reactors at the Savannah River site next year. The Assistant Secretary for Defense Programs will be the key player in the restart. He will be charged with making those critical decisions involving the operation and safety of the reactors.

Mr. Chairman, I am aware of the concerns expressed by various groups against Mr. Stello's nomination. It is clear that they are people who do not like Mr. Stello, who do not want him to fill this position. I think it is also clear that they do not like him because he stands up to them when they attempt to raise false and misleading charges about nuclear safety. Let me assure the individuals who oppose this nomination that I have reviewed their concerns. I have also reviewed Mr. Stello's detailed responses to each of the allegations. In my judgment, he has provided documentation that in every case reflects the charges were without merit and that he was either vindicated or the investigation found insufficient evidence of any wrongdoing.

Mr. Chairman, in view of the documentation presented by Mr. Stello and his extensive experience in regulating the nuclear industry which goes back to 1966, I will support Mr. Stello's nomination. His record in the Federal service has been exceptional and was recognized by President Reagan in 1988 when he presented Mr. Stello the Distinguished Rank Award, which is the highest honor of the Federal Government senior executive service.

Mr. Stello, I want you to know that you have my support. I believe you have the experience, the toughness, the ability, and the integrity to take on this challenging position. My congratulations on your nomination and my sincere appreciation for your willingness to take on this critical position. I think our country is fortunate to have a man like you nominated to fill this important position. Thank you, Mr. Chairman.

Chairman NUNN. Thank you, Senator Thurmond. Senator Glenn.

Senator GLENN. Thank you, Mr. Chairman. I do want to make a statement on this. Even though I do not usually do so at the opening of the hearings, I do want to make a statement in this case.

The nomination of Mr. Stello for the vital job of Assistant Secretary of Energy for Defense Programs is now before the committee, of course. The DOE Defense Programs is a troubled program. There is almost no program in Government where a catastrophic failure could so damage both the environment and national security.

For decades, the Defense Programs was veiled in secrecy to inhibit the release of national security information. It is only in the mid to late 1980s the program has been subjected to ever-increasing public scrutiny. It is a program whose credibility with the American people has been badly damaged because of its multidecade accumulation of serious environmental problems and safety concerns that have been well-documented by hearings here and in other fora also. The challenge for the head of Defense Programs now will be to instill a new sense of discipline in the organization and begin to recapture the confidence of the public.

Now how does Mr. Stello's nomination satisfy these needs? Mr. Stello's career has been spent in the regulation of civilian nuclear energy. It is no understatement to say that his record at the Nuclear Regulatory Commission has been controversial. His proponents claim he is a tough regulator who, as NRC's top staffperson, is willing to make difficult decisions during a period when the public has been very suspicious of the commercial nuclear industry and the adequacy of NRC regulation. On the other hand, there have been numerous detractors of Mr. Stello's activities who allege that his tenure at the NRC has been marked by an unseemly lack of judgment.

I am chairman of the Governmental Affairs Committee where we look into some of these things. We have directed investigations into a number of specific incidents that have bearing on Mr. Stello's record. These incidents include an investigation into Mr. Stello's authorization of the payment of several thousands of dollars to a criminally convicted whistleblower for information he was willing to provide against the Deputy Director of the NRC's Office of Investigation. Mr. Stello says that he authorized the payment in furtherance of the NRC's health and safety mission.

Another incident was an investigation into the propriety or lack thereof of Mr. Stello's discussions with Tennessee Valley Authority Nuclear Program Head, Steven White. Critics claim Mr. Stello's activities constituted inappropriate activity for a hands-off regulator. Mr. Stello claimed that he needed to be able to talk in unguarded fashion with his licensees in furtherance of the NRC's health and safety mission.

Another investigation was whether or not Mr. Stello inappropriately interfered with an NRC Inspector General investigation regarding the Comanche Peak, Texas nuclear plant. Mr. Stello claimed that his intervention was appropriate because NRC staff morale was suffering due to the length of the investigation.

Another investigation was whether or not Mr. Stello threatened the Director of the NRC's Office of Investigations. Mr. Stello claimed he was misunderstood and looked forward to improving the relationship with the OI.

There were allegations that Mr. Stello did everything possible to thwart the eventual criminal prosecution of industry officials stemming from the disaster at Three Mile Island. Mr. Stello claimed that the need to address health and safety concerns required taking action independent of the pace of a criminal investigation and that the prosecutors making the allegations were biased against him.

Now there are common questions raised by these past problems. Does the nominee permit and encourage independent investigation of wrongdoing by those charged with such responsibilities?

Does the nominee allow other staff members to perform their functions?

Does the nominee use health and safety concerns to justify actions taken for other reasons?

Does the nominee tend to personalize broad policy disputes?

Does the nominee have the judgment and credibility to assist a program that people lack confidence in already?

I wanted to outline these, Mr. Chairman, so people would be aware that we are going to be asking questions. I want to let Mr. Stello know that we are going to be asking questions on these. I do not believe they were addressed in the committee's questions directly, but these are things that as the chairman of the other committee, I am dutybound to bring up. I do not enjoy bringing these things up at all. We say they are not on the record there, but they are. So we will be looking into some of those things as the hearings go on.

Senator WARNER. Senator, are you aware of this book which Mr. Stello personally prepared? It is a very large volume. It is one of the biggest that I have ever seen in connection with a hearing of this type. He has answered, I think, to the best of his knowledge, all of these allegations.

Senator GLENN. Fine. We will be getting into those as the hearings go on.

Chairman NUNN. Thank you, Senator Glenn. Senator Wirth.

Senator WIRTH. Mr. Chairman, thank you very much. I agree with the distinguished Senator from Virginia that it is unusual for a cabinet officer to be here. I think that that reflects the very unusual situation in which we find ourselves. The nuclear weapons complex is in deep trouble, as we all know, with very unusual controversy surrounding a nominee from the administration, and very unusual allegations, some of which were referred to by the distinguished Senator from Ohio.

I agree that we have to sort out these problems and that there is a sense of urgency. Given that sense of urgency, however, I am surprised that this administration has decided to nominate an individual who is surrounded with such controversy and whose nomination was surely going to get mired down in all kinds of allegations and counterallegations. The need to prepare that kind of a thick document is itself an indication of the kinds of problems that we have.

I further do not understand, Mr. Chairman, why with this environment of urgency, the administration still has not replied to the chairman's request. We have asked for documents related to the fact that Mr. Stello was the subject of a grand jury inquiry conducted by the Department of Justice. This inquiry arose from failures to enforce NRC regulations at Zimmer and Three Mile Island, for the coverup of information pertaining to the Three Mile Island accident, and from parrying and muzzling referrals to the Justice Department involving criminal violations of the Atomic Energy Act by regulated utilities.

These are, Mr. Chairman, very significant allegations, and the fact that we are going ahead without the Department making available to us this information, given the fact that you requested this, I believe, 2 months ago, I find very surprising. There is a sense of urgency. If the record is clear, why do we not have this information in front of us? The Secretary begins his tenure with a tremendous amount of goodwill with Congress.

Chairman NUNN. Senator Wirth, let me just interrupt you to say that we plan to have this information before we conclude this nomination.

Senator WIRTH. I realize that. It is very difficult, I think, given the overall situation. I appreciate that, and certainly we will; but here we are, going into this with a relatively short-fuse on the nomination without this kind of information. To me, it is instructive that there is so much difficulty in getting the Department of Justice to provide this information to us. If there is nothing there, if there are no problems with it, why do we not just get the information? It does not take 2 months to put together the response to a letter from the chairman of the Armed Services Committee in a situation like this. I just do not understand why it takes that long unless somehow there is a sorting out of documents or whatever. What is the problem with getting this information up here? It just adds, it seems to me, to the mire in which we find ourselves.

As I pointed out, Mr. Chairman, we all have enormous respect for the Secretary and the goodwill that he brings to the job, the goodwill that he has up here, and the support that he has up here. Yet, for what is arguably one of the most sensitive positions in the Federal Government, the Secretary has selected an individual whose record at the NRC appears to show a consistent, and in some instances, eager willingness to place production goals ahead of safety concerns.

I am fearful that rather than using his precious political capital to bring these nuclear facilities into compliance with environmental and safety requirements, Secretary Watkins may squander it trying to win congressional approval of a nominee whose professional conduct seems antithetical to what we need in this important post.

The Department of Energy's credibility is at an all-time low, and public apprehension about nuclear weapons production is at an all-time high. As do many other Members of Congress, I have a nuclear weapons facility in my backyard. Rocky Flats is a 35-year-old plant with enormous environmental problems. It is under Federal investigation for illegal burning and dumping of plutonium-contaminated waste, among other infractions.

The citizens of my State, Mr. Chairman, deserve absolute confidence that the Assistant Secretary for Defense Programs is not sacrificing, as in years past, public safety, environmental cleanup, and responsible waste management to meet artificial production deadlines by pushing those aging fragile facilities beyond their safe limits. They must have absolute confidence that the Assistant Secretary will listen to the communities nearby Rocky Flats and that the plants' employees listen to them as well with the same responsiveness that past DOE officials have listened to DOE contractors. With records available to me covering this nominee's career at the NRC, I am afraid the nominee would not enjoy that confidence and the confidence of the citizens of Colorado, and that, it seems to me, is unacceptable.

Three congressional committees or subcommittees, one in the Senate and two in the House, have investigated conduct of the NRC during Mr. Stello's tenure. The committees have criticized, often in scathing terms, Mr. Stello for his coziness with the industry he should have been regulating, for obstructing investigations by his staff into industry wrongdoing, for conducting a vendetta against NRC investigatory staff, and for improperly withholding information vital to a key investigation. We will explore many items on the list of transgressions and judgment errors. I hope we will receive satisfactory answers, but they have not been forthcoming elsewhere.

I have spoken with Secretary Watkins about the possibility of withdrawing the nomination. I understand the Secretary's commitment to this. In his answer in our discussion, Secretary Watkins very fairly did not speak to these allegations, and I would not expect him to. The Secretary told me that Mr. Stello was the only person that he could find for this job. I am sure that there are others, and I know of them.

Also, we talked about the fact that Secretary Watkins said that Mr. Stello had done an excellent job for him in these trying times.

I understand and respect that loyalty, and I thank Mr. Stello for that long and hard work.

Finally, the Secretary has split this job in two in an attempt to lower the controversy and the profile and to perhaps give greater emphasis to a number of the public concerns increasing in the country.

Is all of this enough? That is a decision that we on the committee have to make. I believe that this is the wrong nomination at a time of enormous sensitivity in the country, and I hope that the evidence here will either clear the record and persuade me that my conclusions, having read an enormous amount of this documentation, are incorrect. If not, I hope, Mr. Secretary, that we can move expeditiously in finding another nominee. Thank you very much, Mr. Chairman.

Chairman NUNN. Thank you very much, Senator Wirth. At this time I would like to include for the record Senator Dixon's opening statement.

[The prepared statement of Senator Dixon follows:]

PREPARED STATEMENT BY SENATOR ALAN J. DIXON

Mr. Chairman, today the committee will consider the nomination of Victor Stello to be the Assistant Secretary of Energy for Defense Programs.

This position has become very important because of the many deficiencies that have been discovered over the last few years in the Department of Energy's Nuclear Weapons Program. The Secretary of Energy, Admiral Watkins, has indicated that Mr. Stello is the man that he and the President want for this important position. I look forward to hearing from Mr. Stello during this hearing to determine if he is the individual for this job.

Thank you, Mr. Chairman.

Chairman NUNN. Admiral Watkins, again, we are delighted to have you here for the purpose of introducing a nominee and we welcome you in that role and welcome your comments.

STATEMENT OF ADM. JAMES D. WATKINS (RETIRED), SECRETARY OF ENERGY

Admiral WATKINS. Thank you, Mr. Chairman.

INTRODUCTION OF MR. STELLO

Mr. Chairman, members of the committee, I am here today to introduce Mr. Victor Stello, Jr., President Bush's nominee to be the Assistant Secretary of Energy for Defense Programs. Let me say at the outset, Mr. Chairman, that I had no knowledge of this correspondence between your staff and the counsel for the President. We will expeditiously find those documents and get them to you. I was just unaware of it until today. I am delighted I came to the hearing to find that out. As has already been stated, introduction of a nominee by a Cabinet Secretary is unusual. It is my hope that my presence here today will emphasize the importance I place on Mr. Stello's confirmation.

As you are aware, the future of our nuclear weapons production program has been placed in significant jeopardy because of past poor safety and the overall poor operational performance record within the Department of Energy's defense complex. As a result, I was asked by the President to accept his nomination as Secretary of Energy and to give my personal attention to restoring facilities within the Department of Energy to a condition of safe and efficient operation and at the same time clean up DOE sites from decades of accumulated contamination.

Over the past 10½ months I have taken aggressive and wide-ranging actions to begin accomplishment of these two mammoth tasks, and have gained confidence that I could meet the President's challenge to me to ensure the viability of our nuclear deterrent, provided certain human and other resources are made available to me. I have already made significant progress, particularly since the leadership within this committee has routinely been both understanding and responsive.

As you are aware, I have directed major changes in our organization and contractual arrangements, including basic contract and award fee structures to realign DOE operating cultures and improve DOE line oversight in contractual compliance.

THREE MAJOR NEEDS

However, there are three major needs I now have in order to move forward in my work. These are: (1) confirmation of Victor Stello as Assistant Secretary for Defense Programs; (2) the ability to hire at competitive salaries a small number of DOE specialists in the critically important skill areas of environment, safety, and health, including those I need to assign to Rocky Flats; and (3) establishment of a position of Assistant Secretary for Environmental Restoration and Waste Management to head up my most significant and new program called "Waste Management and Environmental Restoration."

I deeply appreciate the continuing efforts of members of this committee to help me on this critical skill pay issue, the waiver of double-dipping restrictions, and today I am asking your special assistance in helping to confirm Mr. Stello.

For 3 years now, the Assistant Secretary for Defense Programs, one of the toughest jobs in Government, has been filled by a series of individuals in an acting or temporary capacity. This does not indicate that this is an assignment in which we are flooded with nominees, or qualified people who want to serve. The result has been an unnecessary degradation in DOE performance and credibility, as already mentioned before.

With considerable effort, I sought out and helped recruit Mr. Stello and presented his nomination to the White House as the right person for this job, an individual whose tough yet reasoned style meets my requirements. I rarely see these qualities here in Washington in such a demanding Government post.

SAVANNAH RIVER RESTART

I have had the pleasure of working with Vic since April of this year. He has been allowed by the Chairman of the Nuclear Regulatory Commission to work full-time for me since July as an adviser on issues regarding the safe restart of the Savannah River reactors. During the past 5 months in this capacity, he has provided me with an extremely thorough and professional review of the initially-suggested restart plan, received in June from the contractor, which he and I had both judged to be wholly inadequate.

He gave me a superb and thorough new baseline of information on which to base decisions regarding safe reactor restart. He has been analytically tough, has done his homework properly, and commands my respect and that of the new contractor. He now knows all three sick reactors well and the extremely complex set of issues needed to be resolved before they can be brought safely on line.

I am more convinced today than ever before that he is the right man for the job, particularly now with the need to bring the first of the three reactors on line about 1 year from now. It is precisely his well-established regulatory background and track record within the NRC which will enable him to help me manage our DOE operations and cement the proper safety and environmental culture.

Vic has served this Nation well in his work at the Atomic Energy Commission and the Nuclear Regulatory Commission for over 23 years. He is a selfless, dedicated public servant and, unlike other candidates, has not whined to me about pay, inadequate as it is. He is willing to serve.

He has twice been given special awards, one by President Carter and the second, as mentioned by Senator Thurmond, from President Reagan, for his work as a civil servant to promote nuclear safety.

Vic Stello is not a remote intellectual theorizing about the pros and cons of nuclear energy. We have more of them than we need. He is a hands-on manager who knows how to fix broken reactors, a man who has been on the frontlines of improving the management and operating culture of the civilian nuclear industry.

Most importantly, Vic Stello shares my strong view that major improvement of human performance and accountability is mandatory at our DOE facilities. He knows that safe operation and compliance with environmental requirements are essential for public acceptance of continued operation of nuclear facilities. Unlike many of his naysayers, he knows what safe reactor and related nuclear operations means and that they are synonymous with protecting the environment. Many do not know this.

ALLEGATIONS AGAINST MR. STELLO

With respect to the plethora of accusations and innuendo cast against Mr. Stello—and I would like to say, Mr. Chairman, that reading a list of the allegations, and we will get into the counterpart in response to those allegations, but a listing of those at the outset, without discussing their resolution, which in many cases is completed and all in Mr. Stello's favor, seems to me a little bit misleading to those in the room that might be listening.

I just want to set the record straight. We have a lot to talk about. I believe Mr. Stello's response to your questions and those of the committee prior to those hearings clearly lays the groundwork. Just listing allegations may not be, in all candor, fair at this point in time and I would hope that we would hear that a lot in the counter to those allegations, which I believe have been well documented.

Chairman NUNN. Admiral, we will have plenty of time for both sides of it. That is what we are here for.

Admiral **Watkins**. With respect to the plethora of accusations and innuendo cast against Mr. Stello, then, as far as I know, all of them have been thoroughly investigated by appropriate bodies. I have personally reviewed results of those investigations, including FBI reports, and in my opinion and that of appropriate reviewing officials to date, there is nothing in the way of these allegations which should change our minds about his eminent suitability to this job. If that were not so, I would not be here today.

Is Mr. Stello controversial? Sure, as is anyone who has been associated with the regulation of nuclear power and who has had to make tough decisions and carry them out despite heavy and often opposing pressure from constituencies on every side of the nuclear debate.

So thank you for allowing me to introduce Mr. Victor Stello to you this morning, Mr. Chairman. The time is short before Congress recesses for the year. No one knows better than I how hard you have all worked to complete your DOD authorization work and many other important and demanding issues with which this committee must deal.

However, this issue of confirming my Assistant Secretary for Defense Programs is obviously number one to me. I need Mr. Vic Stello managing Defense Programs now. I stand ready to do whatever I can to help support his confirmation by the Senate as expeditiously as possible.

Finally, with your permission, Mr. Chairman, I would like to enter for the record copies of at least two letters in support of Mr. Stello's nomination which were sent to me by former Chairmen and Commissioners of the Nuclear Regulatory Commission, two of whom are here with us today, namely, former Chairmen of the Commission, Marcus Rowden and Lando Zech. Former Chairman John Ahearne tried to be here today, but I have him working in Texas and we could not make the transportation work out.

Thank you very much, Mr. Chairman, for this opportunity to introduce my candidate, and if you desire I will stand by for any time you deem appropriate for me for questions and answers.

[The prepared statement of Admiral Watkins and supporting letters referred to follow:]

PREPARED STATEMENT OF JAMES D. WATKINS, SECRETARY OF ENERGY

Mr. Chairman, and members of the Committee, I am here today to introduce Mr. Victor Stello, Jr., President Bush's nominee to be Assistant Secretary of Energy for Defense Programs.

I know that introduction of a nominee by a Cabinet Secretary is quite unusual. It is my hope that my presence here today will emphasize the importance I place on Mr. Stello's confirmation.

As you are aware, our nuclear weapons production program is at a virtual standstill. I was asked by President Bush to give as Secretary of Energy my personal attention to restore the facilities within the Department of Energy to a condition of safe operation and at the same time, clean up DOE sites from 40 years of accumulated contamination.

Over the past 10½ months, I have been working on these two mammoth assignments in an organized fashion. I have made significant progress, particularly with the tremendous personal support of the members of this Committee.

I have directed major changes in our organization and our contractual arrangements including award fee structures to realign DOE operating cultures and improve DOE control over our contractors. The three major needs to move forward in my assignment are, (1) the confirmation of Victor Stello as Assistant Secretary for

Defense Programs, (2) the ability to hire at competitive salaries DOE specialists in the areas of environment, safety and health, and (3) establishment of a position of Assistant Secretary for Environmental Restoration and Waste Management to assist me in cleaning up DOE sites. I deeply appreciate the continuing efforts of members of this Committee to help me on the pay issue and today I ask your special assistance in confirming Vic.

For 3 years now, the Assistant Secretary for Defense Programs, one of the toughest jobs in Government, has been filled by a series of individuals in an acting capacity. Vic Stello is the right person for this job which requires the the type of tough management we rarely see in Washington. I have had the pleasure of working with Vic since April of this year, as an adviser to me on issues regarding the safe restart of the Savannah River Reactors. Vic provided me with an intense and thorough review of the then suggested restart plan, which he judged to be wholly inadequate. He gave me a superb and thorough baseline of information on which to base my decisions. He was analytically tough, did his homework properly and commanded the respect of the contractor. I am more convinced today than ever before that he is the right man for the job. It is precisely his strong regulatory background which will enable him to help me manage our DOE operations and establish a proper safety and environmental culture.

Vic has served this nation well in his work at the Atomic Energy Commission and the Nuclear Regulatory Commission for over 23 years. He has twice been given special awards, one by President Carter and the second by President Reagan for his work as a civil servant to promote nuclear safety. Vic is not a remote intellectual theorizing about the pros and cons of nuclear energy. He is a hands on manager who knows how to fix broken reactors, who has been on the front lines of improving the management and operating culture of the civilian nuclear industry. Most importantly, Vic shares my strong view that major improvement of human performance and accountability is mandatory at our DOE facilities. He knows that safe operation and compliance with environmental requirements is essential for the sound operation of nuclear facilities.

With respect to all of the accusations and innuendos cast against Vic, let me say that to the best of my knowledge all of them have been thoroughly investigated by appropriate agencies and I have personally reviewed the results of those investigations including the FBI report. In my opinion, and that of appropriate officials, there is nothing in Victor Stello's past which would make him unqualified to do this job. If that were not so, I would not be here today. Is Vic controversial, yes, as is anyone who has been associated with nuclear power who has had to make tough decisions and then carry them out.

Thank you for allowing me to introduce Vic to you this morning. The time is short before the Congress recesses for the year, and no one knows better than I, how hard you all have worked to complete your authorization bill and how many other important and demanding issues you must deal with. However, this issue is of prime importance to me because I need Vic managing Defense Programs. I stand by ready to do whatever I can do to have him confirmed as Assistant Secretary for Defense Programs. With your permission, Mr. Chairman, I would like to enter for the record copies of letters in support of Vic's nomination which were sent to me by former Chairman and members of the Nuclear Regulatory Commission.

FRIED, FRANK, HARRIS, SHRIVER & JACOBSON,
Washington, DC, October 18, 1989.

Hon. SAM NUNN,
Chairman, Senate Armed Services Committee, U.S. Senate, Washington, DC

DEAR SENATOR NUNN: The President's nomination of Victor Stello, Jr. to be Assistant Secretary of Energy for Defense Programs is currently under consideration by the Armed Services Committee. Since the nominee's competence and character are central to his qualifications for office, I would like to offer my views on those matters based on a lengthy working relationship with Mr. Stello while I was a government official and on my knowledge of his performance as a nuclear regulator since then.

Mr. Stello was a regulatory staff official at the Atomic Energy Commission during the time when I was the AEC's Associate General Counsel for Regulatory Matters and later its General Counsel (1971–1974). Subsequently, he was Assistant Director for Reactor Safety at the Nuclear Regulatory Commission during the period when I was a Commissioner and, then, Chairman of the NRC (1975–1977). I thus had substantial opportunity to assess Mr. Stello's professional capabilities, his character and his performance as a nuclear regulator—often in circumstances where the demands on him were extraordinary.

Throughout that period—and as I have followed his NRC career thereafter—Mr. Stello has been an exceptionally effective nuclear regulator. His technical competence, as judged by his peers, is plainly of the highest order. That competence, coupled with his energy and uncompromising sense of responsibility, has repeatedly led his superiors to seek him out for the most demanding tasks. Mr. Stello's performance, moreover, has consistently justified their confidence in him.

As is well known in the nuclear regulatory community (among regulators and regulated alike), Victor Stello is straight-forward to the point of bluntness. He is intolerant of second rate performance, impatient with delay and direct in his communication of criticism. These are uncomfortable, even abrasive, characteristics to some people; they are, however, invaluable attributes to those who rely on him to deal with difficult problems in a timely and uncompromising manner. Indeed, "uncompromising" is as apt a characterization of Victor Stello's approach to his regulatory duties as I can find.

Critics of Mr. Stello's nomination have charged him with undue liberality to the nuclear industry during his tenure at the NRC. I find those charges ludicrous. To me, he is the prototypical "tough regulator"—tough in the standards he sets, remorseless in insisting on their observance and unvarnished in his communication to those in the industry who do not measure up to those standards. These traits may not make him a pleasant fellow in some quarters, but I find them singular assets for a public official charged with nuclear safety responsibilities.

All of these attributes were on full display when Mr. Stello worked with me and for me at the AEC and the NRC. I believe, moreover, that they have served the nuclear regulatory program well in his discharge of the increasing management responsibilities he earned at the NRC in the dozen years since I left the agency.

I have every confidence that if confirmed by the Senate Victor Stello will serve his Department and the country with distinction and that his proven managerial talents, nuclear safety experience and dedication will be put to effective use. I respectfully urge the Committee's favorable consideration of Mr. Stello's nomination.

Sincerely yours,

MARCUS A. ROWDEN.

OCTOBER 10, 1989.

Hon. JOHN W. WARNER,
Senate Armed Services Committee,
U.S. Senate, Washington, DC.

DEAR SENATOR WARNER: As you probably know, I completed my five year appointment, the last three years as Chairman, on the U.S. Nuclear Regulatory Commission in July, 1989. It was a privilege to serve my country again in that important assignment.

I well remember our days together when you were Secretary of the Navy, and I will always be grateful to you for your very kind introduction and for your strong support during my nomination process.

I am enclosing a copy of a letter which I have written to Senator Nunn regarding the nomination of Victor Stello, Jr. to the position of Assistant Secretary of the Department of Energy for Defense Production.

I know Vic Stello very well and, as the letter states, have worked closely with him for the past five years.

Vic Stello truly is one of our very finest public servants and is exactly the person whom Secretary Jim Watkins and our country needs.

I strongly recommend you support Vic Stello for that important position.

With kindest regards.

Sincerely,

LANDO W. ZECH, Jr.

OCTOBER 10, 1989.

Hon. SAM NUNN,
Chairman, Senate Armed Services Committee,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The purpose of this letter is to support the nomination of Victor Stello, Jr. to be the Assistant Secretary of Energy for Defense Programs.

I first met Vic Stello when I became a member of the U.S. Nuclear Regulatory Commission (NRC) in 1984. When I became Chairman of the Commission in 1986, I requested and received support from my fellow Commissioners for Vic Stello to become the Executive Director of Operations (EDO), the senior career position. When I completed my five year appointment in July 1989, my successor retained Vic Stello as the EDO.

The reason I selected Vic Stello for this important position was my keen desire to improve the performance of the NRC and to improve the performance of the commercial nuclear power industry in our country. In order to accomplish these important goals, I needed an Executive Director who was technically competent, action-oriented and unwaveringly committed to safety. I wanted an individual with the moral courage and toughness to make the hard decisions which were bound not to please everyone, but would be the right ones for the American people. Vic Stello met all those qualifications and performed as the EDO under my chairmanship in a superbly outstanding manner.

For the recent improvements in the NRC and for the very measureable safety and reliability improvements in the commercial nuclear industry in our country, Vic Stello deserves a very large measure of credit. He gets things done. But Vic Stello is much more than doer-and-shaker. He is a family man, a highly principled individual, a people-oriented man, a dedicated and patriotic American and certainly one of our nation's finest public servants.

Vic Stello did not seek this enormously difficult, almost thankless job. He was asked to take it. I am personally aware that he agreed to accept the appointment only because he felt he could not refuse to serve in a position of such national importance.

Mr. Chairman, I strongly recommend your approval of his nomination. I am confident that, if confirmed, Vic Stello will continue to serve our nation with great distinction.

With kindest regards.

Sincerely,

LANDO W. ZECH, Jr.

Copy to: Senator John Warner.

Chairman NUNN. Let me ask whether any member of the committee plans to pose questions to Secretary Watkins, because if we do, we will ask him to remain. I would like Mr. Stello to make his statement before we get into any questions. Senator Warner, do you have any questions for Secretary Watkins?

Senator WARNER. Yes, I would like to ask the Admiral questions.

Chairman NUNN. I would not want to get into the questions until we have heard from Mr. Stello. I do not want to leave this hearing at quarter of eleven without having had Mr. Stello make his statement. Admiral, can you wait just a few minutes?

Admiral WATKINS. Yes, sir. Yes, I can, Mr. Chairman.

Chairman NUNN. Mr. Stello, we are delighted to have you and we would be pleased to hear from you, whatever you have to say this morning.

STATEMENT OF VICTOR STELLO, JR., ASSISTANT SECRETARY-DESIGNATE FOR DEFENSE PROGRAMS, DEPARTMENT OF ENERGY

Mr. STELLO. Thank you, Mr. Chairman, and thank you, Admiral Watkins, for the very kind introduction.

I appreciate the opportunity to appear before you today as President Bush's nominee to be the Assistant Secretary for Defense Programs in the Department of Energy. I am honored to have been nominated for this extremely important and challenging position. If confirmed, I look forward to working closely with you and your colleagues as well as the Department of Defense to effectively and efficiently plan and manage the nuclear weapons research development and production activities of our Nation.

QUALIFICATIONS

Before I explain to the committee my priorities for managing the Department of Energy weapons complex, let me take a moment to provide you with my background and qualifications for this challenging position.

I received a bachelor of science and a master of science degree in mechanical engineering from Bucknell University and I completed additional graduate work at Rennselaer Polytechnical Institute. From 1960 to 1965 I worked at the Pratt and Whitney Aircraft's Connecticut Aircraft Nuclear Engine Laboratory.

Since 1965 I have been employed by the Nuclear Regulatory Commission and its predecessor the Atomic Energy Commission. I was appointed by the Nuclear Regulatory Commission as its Executive Director for Operations in January 1986, the position I currently hold. I have served under the leadership of 10 Chairmen of the Atomic Energy Commission and the Nuclear Regulatory Commission.

I was awarded the Presidential Meritorious Rank Award by President Carter in 1980 for sustained superior accomplishments in the management of Federal programs, including major contributions to the management of the events following the March 1979 accident at Three Mile Island. In 1988 President Reagan presented me with the Distinguished Rank Award, the highest honor of the Federal Government's Senior Executive Service. The award recognized my efforts at the Nuclear Regulatory Commission which have led to greatly improved inspection of the commercial nuclear industry, maintaining nuclear power plant safety while reducing the regulatory burden on utilities building and operating these plants, and encouraging the nuclear industry to take initiatives to improve safety standards independent of Federal regulation.

I experienced first hand the risks associated with using nuclear power during my assignment at Three Mile Island following the accident. This was indeed a troubling event for our Nation and the commercial nuclear industry. I believe important lessons resulting from this experience can and should be applied to our Nation's weapons facilities. Changes to the design and operations of commercial reactors following the Three Mile Island accident led to significant safety enhancements of these plants.

Perhaps the most important lesson was the need to change the operating culture at commercial plants which existed before TMI. Significant deficiencies were evident in training, procedures, and safety attitudes. These deficiencies related not only to hardware, but to the way in which human performance had been integrated into the operating philosophy of the management of these plants.

Fundamental changes to industry attitudes and regulatory response were made. Knowledge and skills of the operators, maintenance, management, and support staffs were significantly upgraded. Improved safety practices are now evident. I am proud of the role the NRC has played as a tough regulator in this process and of my contribution to the positive changes that have been made.

Performance indicators show reductions in automatic plant shutdowns, safety system failures, significant safety incidents, personal exposure, and radioactive waste volume. As a direct result of these safety improvements, there has also been a very substantial improvement in plant performance and reductions in their impact on the environment.

In simple terms, commercial nuclear facilities are now safer and more reliable. There are fewer equipment malfunctions and better managed and trained operating staffs. Plant capacity factors have increased 7 percentage points which translates to a capital cost savings to our Nation of about $35 billion, as well as annual savings to the ratepayers of many hundreds of millions of dollars each year. This was accomplished as a direct result of emphasizing safety.

I point to this example from the commercial sector for the purpose of making the point that emphasizing improvements in plant safety will also result in decreased impact on the environment and increased production. I believe this basic philosophy also is applicable to our weapons facilities. Admiral Watkins made this same observation during his confirmation hearing before the Senate Energy and Natural Resources Committee. Namely:

> I have spent most of my professional life in operational policy-making roles within the nuclear Navy. Perhaps my most important experience in the Navy came when I trained and served directly under Admiral Rickover. I learned from him that the fulfillment of the mission of our National defense and the protection of the environment were mutually compatible objectives, and that to think one must be sacrificed to achieve the other was wrong. It is my strongly held personal conviction that the Department of Energy mission can be considered as being successfully completed only if it is carried out safely and without insult to public health or environment.

I completely agree with the statement and the philosophy which it embodies.

WEAPONS COMPLEX

The nuclear deterrent, which in my view has been successful in keeping the peace for almost 50 years, is no less critical today. However, to avoid conditions which could lead to unilateral disarmament, considerable improvement within the weapons complex is urgently needed.

As you are aware, our Nation's production reactors at Savannah River and Hanford have been shut down for safety reasons for almost 2 years. The Hanford facility is proceeding from wet layup to dry layup and will remain in this condition as a contingency backup to the Savannah River reactors. Therefore, safely restarting the Savannah River reactors is the most critical and urgent matter needing attention.

I do not believe that the lessons learned from the Three Mile Island accident have been adequately applied to the Savannah River reactors. Training, procedural compliance, maintenance of equipment, and overall plant safety culture are substantially behind today's commercial standards. I believe the safety of DOE facilities can be improved by applying these standards. If confirmed, it would be my intent to do so.

The reactors are 35 years old and have not been modified to reflect safety improvements in facility design in areas such as safety system performance, seismic design, and fire protection. DOE oversight and monitoring have also been seriously deficient. These deficiencies are being corrected pursuant to a comprehensive program plan developed jointly by the contractor and the DOE. Implementing the plan will be difficult. When complete, however, the safety of the Savannah River reactors will be significantly enhanced.

While I have not had the opportunity to review other Defense Programs facilities in detail, I believe there needs to be increased emphasis on safety and environmental compliance. To achieve this emphasis, clear lines of authority and responsibility must be established within the management structure. The Secretary has directed changes designed to achieve this objective. I fully support these changes. Cooperation among the DOE field offices, headquarters, and contractors will be required in order to realize safety and environmental improvements.

If confirmed, I would conduct detailed reviews of these facilities and develop plans for improving safety and environmental compliance with a goal of achieving excellence of operation at all Defense Programs facilities.

While I have emphasized facility safety, I recognize the many other demanding and challenging tasks associated with Defense Programs. Assurance that our weapons are maintained safely with robust safeguards and security systems in place to protect them at all stages of fabrication and transportation will require continued DOE review and oversight.

The Secretary has recently issued a directive within the Department of Energy which will lead to implementing a strong, comprehensive training program for DOE employees. I strongly support this initiative. I envision a training program similar to the training program that I established at Chattanooga, TN, for the Nuclear Regulatory Commission. A similar DOE program should cover the fundamental knowledge and skills necessary to review designs and inspect nuclear facilities.

With regard to inspection, there is a need to develop a comprehensive inspection program to be followed by DOE employees. In addition, there is also a need to develop a comprehensive system for periodically assessing the performance of facilities to identify areas of weaknesses so corrective action can be implemented.

In summary, the purpose of the needed programs is to help instill cultural change within the DOE and contribute to fulfilling its safety mandate at all DOE activities. The change will not occur overnight, and it will require years to achieve, but it should be started now. These will be challenging tasks, for which I believe my regulatory background would be particularly applicable.

As part of Secretary Watkins' initiatives and proposed reorganization to handle the demanding task of safe disposal of nuclear waste and environmental restoration of sites, the Department is transferring these responsibilities from the Assistant Secretary for Defense Programs to a new organizational component. I fully support this initiative and believe it will eventually result in the most efficient and expedient resolution to the longstanding military nuclear waste problem that has been with us these many years. It will also enable the Assistant Secretary for Defense Programs to devote more time to the demanding tasks of facility safety and environmental compliance.

In conclusion, I recognize that my nomination has received considerable attention and criticism. As the Executive Director of Operations for the Nuclear Regulatory Commission, I was faced with making many difficult decisions which were subjected to considerable debate and criticism. Nuclear power is an inherently controversial subject and all decisions are subject to criticism from one source or another. Some of the decisions I made resulted in unfounded allegations, particularly about my motives. I have provided to the committee responses to these allegations and charges. Many of these allegations have been subjected to one or more investigations by various oversight groups, congressional committees, and the Federal Bureau of Investigation. Results of these investigations show that these allegations were unsubstantiated.

My primary motivation, and the central theme of my actions over the past 23 years, has been the safe regulation of commercial nuclear programs. I would carry the same motivation to protect the public health and safety and environment to this new position.

Please understand, Mr. Chairman, that I did not seek this enormously difficult task. I was asked to take it. I accepted this honor because of my desire to serve my country. I also agreed to this appointment because I am confident that my nearly 30 years of nuclear experience in the field of nuclear safety practice provides me with a solid foundation to contribute to the Department of Energy's challenging task of restoring our weapons complex to a state of excellence.

I am honored that the President has nominated me and that I have the full support of Secretary Watkins. If confirmed, I give you my pledge that I will dedicate all of my energy to restore our Nation's weapons facilities to operational excellence. I now would be pleased to answer any questions that you may have.

[The prepared statement of Mr. Stello follows:]

PREPARED STATEMENT OF VICTOR STELLO, JR., ASSISTANT SECRETARY-DESIGNATE FOR DEFENSE PROGRAMS, DEPARTMENT OF ENERGY

Thank you for the opportunity to appear before you today as President Bush's nominee to be the Assistant Secretary for Defense Programs in the Department of Energy. I am honored to have been nominated for this extremely important and challenging position. If confirmed, I look forward to working closely with you and your colleagues as well as the Department of Defense to effectively and efficiently plan and manage the nuclear weapons research, development and production activities of our Nation.

Before I explain to the committee my priorities for managing DOE's weapons complex, let me take a moment to provide you with my background and qualifications for this challenging position. I received a bachelor of science and master of science degree in mechanical engineering from Bucknell University and I completed additional graduate work at Rensselaer Polytechnic Institute. From 1960 to 1965, I worked at the Pratt and Whitney Aircraft's Connecticut Aircraft Nuclear Engine Laboratory.

Since 1965, I have been employed by the Nuclear Regulatory Commission and its predecessor the Atomic Energy Commission. I was appointed by the Nuclear Regulatory Commission as its Executive Director for Operations in January 1986, the position I currently hold. I have served under the leadership of ten Chairmen of the Atomic Energy Commission and the Nuclear Regulatory Commission. I was awarded the Presidential Meritorious Rank Award by President Carter in 1980 for sustained superior accomplishments in the management of Federal programs, including major contributions to the management of the events following the March 1979 accident at Three Mile Island. In 1988, President Reagan presented me with the Distinguished Rank Award, the highest honor of the Federal Government's Senior Executive Service. The award recognized my efforts at the Nuclear Regulatory Commission which have led to greatly improved inspection of the commercial nuclear industry, maintaining nuclear power plant safety while reducing the regulatory burden on utilities building and operating these plants, and encouraging the nuclear industry to take initiatives to improve safety standards independent of Federal regulation.

I experienced first hand the risks associated with using nuclear power during my assignment at Three Mile Island following the accident. This was indeed a troubling event for our Nation and the commercial nuclear industry. I believe important lessons resulting from this experience can and should be applied to our Nation's weapons facilities.

Changes to the design and operations of commercial reactors following the Three Mile Island accident led to significant safety enhancements of these plants. Perhaps the most important lesson was the need to change the operating culture at commercial plants which existed before TMI. Significant deficiencies were evident in training procedures and safety attitudes. These deficiencies related not only to hardware, but to the way in which human performance had been integrated into the operating philosophy of the management of these plants. Fundamental changes to industry attitudes and regulatory response were made. Knowledge and skills of the operators, maintenance, management and support staffs were significantly upgraded. Improved safety practices are now evident. I am proud of the role NRC has played as a tough regulator in this process and of my contribution to the positive changes that have been made. Performance indicators show reductions in automatic plant shutdowns, safety system failures, significant safety incidents, personnel exposure and radioactive waste volume. As a direct result of these safety improvements there has also been a very substantial improvement in plant performance and reductions in their impact on the environment. In simple terms, commercial nuclear facilities are now safer and more reliable. There are fewer equipment malfunctions, and better managed and trained operating staffs. Plant capacity factors have increased seven percentage points, which translates to a capital cost savings (to our Nation) of about 35 billion dollars, as well as annual savings to the ratepayers of many hundreds of millions of dollars each year. This was accomplished as a direct result of emphasizing safety. I point to this example from the commercial sector for the purpose of making the point that emphasizing improvements in plant safety will also result in decreased impact on the environment and increased production. I believe this basic philosophy also is applicable to our weapons facilities. Admiral Watkins made this same observation during his confirmation hearing before the Senate Energy and Natural Resources Committee, namely: I have spent most of my professional life in operational and policy-making roles within the nuclear Navy. Perhaps my most important experiences in the Navy came when I trained and served directly under Admiral Rickover. I learned from him that the fulfillment of the mission of our National defense and the protection of the environment were mutually compatible objectives, and that to think one must be sacrificed to achieve the other was wrong. It is my strongly held personal conviction that DOE's mission can be considered as being successfully completed only if it is carried out safely and without insult to public health or environment.

I completely agree with this statement and the philosophy which it embodies. The nuclear deterrent which, in my view, has successfully kept the peace for almost 50 years, is no less critical today. However, to avoid conditions which could lead to unilateral disarmament, considerable improvement within the weapons complex is urgently needed. As you are aware, our Nation's production reactors at Savannah River and Hanford have been shut down for safety reasons for almost two years. The Hanford facility is proceeding from wet layup to dry layup and will remain in this condition as a contingency backup to the Savannah River Reactors. Therefore, safely restarting the Savannah River Reactors is the most critical and urgent matter needing attention.

I do not believe that the lessons learned from the Three Mile Island accident have been adequately applied to the Savannah River reactors. Training, procedural compliance, maintenance of equipment and overall plant safety culture are substantially behind today's commercial standards. I believe the safety of DOE facilities can be improved by applying these standards. If confirmed, it would be my intent to do so. The reactors are 35 years old and have not been modified to reflect safety improvements in facility design in areas such as safety system performance, seismic design and fire protection. DOE oversight and monitoring have also been seriously deficient. These deficiencies are being corrected pursuant to a comprehensive program plan developed jointly by the contractor and DOE. Implementing the plan will be difficult. When complete, however, the safety at the Savannah River reactors will be significantly enhanced. While I have not had the opportunity to review other Defense Program facilities in detail, I believe there needs to be increased emphasis on safety and environmental compliance. To achieve this emphasis, clear lines of authority and responsibility must be established within the management structure. The Secretary has directed changes designed to achieve this objective. I fully support these changes. Cooperation among the DOE field, headquarters and contractors will be required in order to realize safety and environmental improvements. If confirmed, I would conduct detailed reviews of these facilities and develop plans for improving safety and environmental compliance, with a goal of achieving excellence of operation at all Defense Program facilities.

While I have emphasized facility safety, I recognize the many other demanding and challenging tasks associated with Defense Programs. Assurance that our weapons are maintained safely, with robust safeguards and security systems in place to protect them at all stages of fabrication and transportation, will require continued DOE review and oversight.

The Secretary has recently issued a directive within the Department of Energy, which will lead to implementing a strong comprehensive training program for DOE employees. I strongly support this initiative. I envision a training program similar to the training program that I established at Chattanooga, Tennessee for the NRC. A similar DOE program should cover the fundamental knowledge and skills necessary to review designs and inspect nuclear facilities. With regard to inspection, there is a need to develop a comprehensive inspection program to be followed by DOE employees. In addition, there is also a need to develop a comprehensive system for periodically assessing the performance of facilities to identify areas of weakness, so corrective action can be implemented. In summary, the purpose of the needed programs is to help instill cultural change within the DOE and contribute to fulfilling its safety mandate at all DOE activities. The changes will not occur overnight and will require years to achieve but should be started now. These will be challenging tasks, for which I believe my regulatory background would be particularly applicable.

As part of Secretary Watkins' initiatives and proposed reorganization to handle the demanding task of safe disposal of nuclear waste and environmental restoration of sites, the Department is transferring these responsibilities from the Assistant Secretary for Defense Programs to a new organizational component. I fully support this initiative and believe it will eventually result in the most efficient and expedient resolution to the long-standing military nuclear waste problem that has been with us these many years. It also will enable the Assistant Secretary for Defense Programs to devote more time to the demanding tasks of facility safety and environmental compliance.

In conclusion, I recognize that my nomination has received considerable attention and criticism. As the Executive Director for Operations for the Nuclear Regulatory Commission, I was faced with making many difficult decisions, which were subjected to considerable debate and criticism. Nuclear power is an inherently controversial subject and all decisions are subject to criticism from one source or another. Some of the decisions I made resulted in unfounded allegations, particularly about my motives. I have provided to the committee responses to these allegations and charges. Many of these allegations have been subjected to one or more investigations by various oversight groups, congressional committees and the Federal Bureau of Investigation. Results of these investigations show that these allegations were unsubstantiated. My primary motivation and the central theme of my actions over the past 23 years has been the safe regulation of commercial nuclear programs. I would carry the same motivation to protect the public health and safety and environment to this new position.

Please understand that I did not seek this enormously difficult task. I was asked to take it. I accepted this honor because of my desire to serve my country. I also agreed to this appointment because I am confident that my nearly 30 years of nuclear experience in the field of nuclear safety provides me with a solid foundation to contribute to the Department of Energy's challenging task of restoring our weapons complex to a state of excellence. I am honored that the President has nominated me and that I have the full support of Secretary Watkins. If confirmed, I give you my pledge that I will dedicate all of my energy to restore our Nation's weapons facilities to operational excellence. I will be pleased to answer any questions you may have.

Chairman NUNN. Thank you, Mr. Stello. I'm going to interrupt the hearing because we have 10 nominees and we have had hearings on all of them. Senator Warner and I have reviewed the FBI files on all of them. The staff has reviewed all of the conflict of interest possibilities and cleared any such concerns, so I am going to call the name of each nominee now—unless there is objection from somebody on the committee—because we have had these for about a week and ask that there be a motion and a second and we will vote on each one of them as called. Is there an objection, first of all, to proceeding on these nominations?

[No response.]

If not, the first one is Mr. Dwayne P. Andrews, Assistant Secretary of Defense, Command Control, Communications, ~~and Intelli~~gence. Do I have a motion?

Senator Warner. I so move.

Senator Exon. Second.

Chairman Nunn. A motion and a second. All in favor signify by saying aye.

[Chorus of ayes.]

Opposed?

[No response.]

Hearing none, the motion is agreed to. Mr. Michael B. Donley, Assistant Secretary of the Air Force for Financial Management, do I hear a motion on this?

Senator Warner. So moved.

Senator Exon. Second.

Chairman Nunn. All in favor signify by saying aye.

[Chorus of ayes.]

Opposed?

[No response.]

Motion carries. Mr. Robert C. Duncan, Director of Operational Test and Evaluation, is there a motion?

Senator Warner. I so move.

Senator Exon. Second.

Chairman Nunn. Motion and second. All in favor signify by saying aye.

[Chorus of ayes.]

Opposed?

[No response.]

Motion carries. Mr. Christopher Jehn, Assistant Secretary of Defense for Force Management and Personnel.

Senator Warner. I so move.

Senator Exon. Second.

Chairman Nunn. All in favor signify by saying aye.

[Chorus of ayes.]

Opposed?

[No response.]

The motion carries. Mr. Craig S. King, General Counsel, Department of the Navy.

Senator Warner. I move.

Senator Exon. Second.

Chairman Nunn. The motion is seconded. All in favor signify by saying aye.

[Chorus of ayes.]

Opposed?

[No response.]

The motion carries. Ms. Susan M. Livingstone, Assistant Secretary of the Army for Installations and Logistics.

Senator WARNER. I move.

Senator EXON. Second.

Chairman NUNN. Motion and second. All in favor signify by saying aye.

[Chorus of ayes.]

Opposed?

[No response.]

The motion carries. Mr. Antonio Lopez, Associate Director of the Federal Emergency Management Agency, National Preparedness Directorate. Motion?

Senator WARNER. Move the nomination.

Senator EXON. Second.

Chairman NUNN. The motion is seconded. All in favor signify by saying aye.

[Chorus of ayes.]

Opposed?

[No response.]

The motion carries. Ms. Ann C. Petersen, General Counsel of the Air Force.

Senator DIXON. Mr. Chairman, I would like to move the nomination as Ms. Petersen is from the State of Illinois.

Senator EXON. Second.

Chairman NUNN. Fine. Senator Dixon's motion, Senator Exon's second—all in favor signify by saying aye.

[Chorus of ayes.]

Opposed?

[No response.]

The motion carries. Ms. Barbara S. Pope, Assistant Secretary of the Navy for Manpower and Personnel.

Senator WARNER. Move the nomination.

Senator EXON. Second.

Chairman NUNN. Motion is seconded. All in favor signify by saying aye.

[Chorus of ayes.]

Opposed?

[No response.]

Motion carries. Mr. G. Kim Wincup, Assistant Secretary of the Army for Manpower and Reserve Affairs. Motion?

Senator WARNER. Move the nomination.

Senator EXON. Second.

Chairman NUNN. The motion has been made and seconded. All in favor signify by saying aye.

[Chorus of ayes.]

Opposed?

[No response.]

The motion carries. We will keep the record open for all other Senators that wish to be recorded as favoring or opposing these nominations. We do have about four nominations where we have had hearings, we reviewed the report. There are continuing details. We do not see serious obstacles, but there are serious questions that we have to answer relating to certain details on conflict in financial matters, and these will be withheld until we can satisfy all of these questions.

At this stage I am going to resume the hearing on Mr. Stello and since Senator Warner has questions of Admiral Watkins, I am going to ask anyone having questions of Admiral Watkins to go first. Senator Warner.

MR. STELLO'S QUALIFICATIONS

Senator **Warner**. Admiral, first, you and I have known each other for a very long time, and you bring to this administration and any job that you serve under two really outstanding qualifications: one, technical, and two, personnel.

When we first went together to work on problems, you were a Navy captain in the Bureau of Personnel. Subsequently you rose through the ranks to become the Chief of Naval Operations, and you had personnel responsibility for well over 2 million people. You understand people. You have a unique ability to evaluate people.

I judge by your presence here today that you have no reservations whatsoever about this individual's honesty, character, integrity, and fairness to deal with people. Am I correct?

Secretary **Watkins**. That is correct, Senator Warner. I have no reservations of any kind.

Senator **Warner**. Well, it seems to me that those are the criteria which should be the principal ones that would guide this committee and Senators as we make our evaluation of a nominee by the President of the United States.

Mr. Stello, in my judgment looking through this voluminous record, is caught between a rock and a hard place, those who favor going forward with various aspects of nuclear power and those who are opposed to it. And if that be the case, I think it is incumbent upon the Senate to repose judgment in the President and yourself to make this nomination. We may have honest differences and people on both sides of that issue have honest differences of opinion. But bottom line is this man's character, in your judgment, is flawless.

Secretary **Watkins**. Flawless is——

Senator **Warner**. Well, I think we covered the various——

Secretary **Watkins** [continuing]. A weak word, Senator Warner. I am certainly not flawless.

Senator **Warner**. I led you one step too far, sir, as an old trial lawyer.

Secretary **Watkins**. I know you are, Senator, and I have a hard problem with that kind of a statement about anyone. I think he is an incredible public servant, he is a man of great personal integrity and professional integrity. He has his eye on the ball, he was willing to serve when others were not. I had five candidates, four of whom backed out because of pay. He did not, and yet he took even a pay cut to come from the Nuclear Regulatory Commission.

Senator **Warner**. In terms of his personal integrity, there is no question.

Secretary **Watkins**. His personal integrity is 4.0. It is flawless in my opinion.

Senator **Warner**. That is all I wanted to know. Thank you.

Chairman **Nunn**. Any other questions of Secretary Watkins—not of Mr. Stello, but Secretary Watkins now.

Senator **Wirth**. Mr. Chairman.

Chairman **Nunn**. Senator Wirth.

INTERACTION WITH THE WHITE HOUSE

Senator **Wirth**. Mr. Secretary, we really appreciate your being here. One of the concerns that has surrounded this nomination is that this is not your nomination, but rather it is a nomination which has been thrust upon you by the White House, most specifically the Chief of Staff at the White House.

Secretary **Watkins**. That is not correct, Senator Wirth. I had an opportunity here, with agreement from the Chief of Staff and the White House, to make my recommendations on this particular assignment—Assistant Secretary for Defense Programs. On other positions we were given nominees from the White House for me to exercise my veto responsibilities on. But on this particular position I was asked by the White House to do the best job I could independent of any politics to pick the person that could do this tough job.

I was asked to come in and clean up a mess. I did not volunteer for this either. The President called me and said will you do it, and I said I do not know, Mr. President. I will try but I am not sure I can even do it myself. But because you asked me, I will take it over. And we are both here on that same basis.

This is the toughest job I have. This is two-thirds of my budget. This is everything in maintaining the nuclear deterrent. So I canvassed the Nation, and I was able to come up with five people who had the credentials, and this particular individual had those same credentials. The others dropped off the list. They would not serve because of the pay issue, and I do not blame them. They could not serve because they could not make it here. Vic was here, and he was willing to do it. So, he was one of the five candidates, and I nominated him to the White House and said this is the person for me, and they supported that.

So, it was a unique situation in this particular case, and it is the most important one in which I have had that kind of input to the White House personnel process. Because of my background they knew I could pick the person as well as anyone in the country could pick them.

Senator **Wirth**. Thank you very much, Mr. Secretary. I appreciate the fervor of your statement and your commitment, and I understand the pay problems that you face. I wanted to make sure, for the record, that statement and the history of the nomination was clear for the record, and I thank you for being here.

Chairman **Nunn**. Other questions of Secretary Watkins? Senator Levin.

Senator **Levin**. Thank you, Mr. Chairman.

ALLEGATIONS AGAINST MR. STELLO

Mr. Secretary, Congressman Dingell sent Chairman Nunn a letter dated August 3. Are you familiar with that letter?

Secretary **Watkins**. Yes, sir, I am.

Senator **Levin**. In that letter he recommended that this committee investigate certain aspects of Mr. Stello's background and specifically suggested that this committee do a number of things. First of all, that we communicate with the following people who were former NRC commissioners, Victor Gilinsky, Peter Bradford, James Asselstine, and that we also contact Mr. Julian Greenspun, who is a former prosecutor involved in the Justice Department inquiry. Have you personally talked with those people either before or after the nomination was first——

Secretary WATKINS. No, sir, I have not.

Senator LEVIN. Can you tell us if you are familiar with those allegations of a House subcommittee——

Secretary WATKINS. I have reviewed all the allegations, Senator Levin. I have a list of them right here. There are 13 that I have reviewed in some depth. Two of those really involve Mr. Stello. Both of those have been, in my opinion, clarified, so I have covered all the issues, and I see no reason to go further.

I have heard from former NRC chairmen and there are two in the room here today with us. They have written letters to the committee. I have been made privy to those letters. The large majority of former commissioners and chairmen have been strongly supportive of Victor Stello, and that has been the information I have received. We have other issues with Mr. Bradford, and so I have stayed out of that discussion for obvious reasons.

Senator LEVIN. Another part of the letter is that we obtain the Department of Justice memorandum. It is called a termination memorandum that according to Congressman Dingell, describes the difficulties in prosecuting a case. I am wondering whether or not you have read that memorandum.

Secretary WATKINS. I am not familiar with the specific memorandum with all of the—we have a stack of documents I have read through, Senator, but I cannot recall that one.

Chairman NUNN. Senator Levin, that is part of the request that is outstanding from the Justice Department.

Senator LEVIN. I was curious as to whether or not Secretary Watkins had seen that memo.

Secretary WATKINS. No. I was not aware that we had some outstanding correspondence until I came to the hearing this morning. The Department normally does not provide that, and somehow the White House did not inform us of the needs of the committee in that particular regard, and we will see that it comes up here promptly.

Senator LEVIN. Thank you so much.

Chairman NUNN. Thank you, Senator Levin. Any other questions of Secretary Watkins? If not, Mr. Secretary, you are welcome to stay, but we also know you have enormous responsibilities, so it is your call. Thank you for being here.

Secretary WATKINS. Thank you for this opportunity.

Chairman NUNN. We appreciate it. Mr. Stello, let me lead off. We are going to keep time now, and I will ask the clerk to notify me when my time has expired. First, let me ask you, what do you see as your top priority if you are confirmed in your new job?

RESTART OF SAVANNAH RIVER

Mr. **Stello**. I do not think I have any question in my mind with respect to answering that. It is clearly making sure that all of the issues identified are identified and implemented with respect to the safety of the Savannah River reactors. If those reactors cannot be restarted for safety reasons, this country and the whole weapons system is going to be put into jeopardy. So, if there is any one particular activity that I believe will need very urgent attention, it is dealing with the safety issues associated with the restart of the Savannah River reactors. Without them, everything else will be useless.

Chairman **Nunn**. What is your judgment now as you sit here testifying as to whether those reactors can be safely restarted next year?

Mr. **Stello**. The program that is in place if properly implemented—if we get all the things done and they come out successfully, I feel pretty comfortable that we will be able to make the case for safety. But there are several caveats. Those reactors are very old, and let me explain why I say there are caveats.

We are doing ultrasonic testing at the present time on those vessels. One of them has been finished with its projected test program, and it has come out to be okay. We have yet to do them on two other vessels. The vessels are 35 years old, and this is the first time we are doing it. We do not know what we can find. We do not know what we will find. If we find serious flaws or defects, there will be serious questions about whether those vessels can be repaired, if, in fact, they can be repaired and if, in fact, they can be operated. So, there are reservations about some of the things that need to be done.

We have a lot of work to do with respect to people. There is a cultural problem that has been down there. They just had poor procedures. They have had poor lines of communication, poor reporting systems, poor training programs, and all of the people-related kinds of problems that we had concentrated on after TMI are being focused on down there now essentially for the first time.

Chairman **Nunn**. Whose fault is that, Mr. Stello? I am not talking about by name, but how does a Government program get into this kind of difficulty and go on for years and years in this kind of difficulty in one of the most important and sensitive issues we have involving both the safety of our people in terms of safety from any kind of accidents and also safety in the national security sense? How did we get in this situation?

Mr. **Stello**. Probably several reasons. I think Senator Glenn touched on one. The program was cloaked in secrecy for many years. It was not subjected to public scrutiny and was not being given the attention it should have, and I think had that been, perhaps more pressure would have been brought to bear.

Clearly the Department of Energy, I think, as always, they clearly had the authority, the power to change things. I don't believe they were capable of going in and making the independent assessments and evaluations to really understand the magnitude of the problem. Some of them had been around for years and even those that were known, they had not been acted on. So, clearly, the Department of Energy. They have to be partially responsible, too.

The contractor. The unique kind of a contract, as you are aware, with Du Pont and the Department of Energy over the many, many years, I think there is an attitude that existed. There was a confusion, I think, over many years as to an overemphasis production. Production was far more important than anything else, and a confusion as to who, in fact, was responsible for dealing with safety and environmental issues.

What I guess I am saying is I think there is enough blame to go around to make sure everybody gets a big, fair share of it, and they all ought to agree that they all are responsible for the state of affairs, everybody that has been involved.

I think the healthy thing about it is it is now admitted, it is recognized, it is out in the open, and everybody agrees it is a real problem, and it needs to be fixed, and that is the first step in getting it corrected, and that is on the table.

STATUS OF THE WEAPONS COMPLEX

Chairman **NUNN**. Are there any other time bombs out there? Maybe that is not the right expression, but are there any other problems out there of great magnitude that are not yet uncovered? Do you have a list of three or four major dangers that you are looking into that we have not even heard about yet?

Mr. **STELLO**. Well, we already know from the limited knowledge I have that there are clearly serious problems at Rocky Flats, and that is going to take a great deal of effort to fix them. Those are coming up on the table right now.

I think there needs to be a pretty good system, the kind of a program that I talked about needs to be put in place, to go get a comprehensive program in place now for Rocky Flats. I expect to some degree or other you are going to find that there are problems. I do not think—at least I have not sensed—any of the same magnitude as we have seen with the Savannah River reactors, but I expect that we will see problems that need correcting at all of the facilities just because of the way this DOE system has been operating for these now dozen or so years. I think we are going to see problems that are going to be tough, and we need to put some systems in place so we can identify them.

The other point I tried to make in my testimony, I think if ever I sensed the time when things really started to change in the commercial sector, it is where we really started to get in the position where we could look at each and every facility and get on the table where the real problems and the real issues that that particular facility had to address and get them addressed openly, above board, and lay out a program to do it and get the utility management behind doing it, get that kind of a commitment.

You need programs like that within the Department—facility-by-facility literally—to be able to get those problems on the table, get them solved so that we, in fact, do not let this happen. I think that is probably the first and foremost task with respect to all the facilities is to get them so that they are operating safely, in environmental compliance. That has to be number one across the board. And clearly there are other problems. Make no mistake about it.

Chairman NUNN. Thank you, Mr. Stello. I will have other questions as we go along. My time has expired. Senator Lott, I believe that Senator Warner has already had his turn, so it is your turn.

Senator LOTT. Mr. Chairman, I will be brief because I know we do have a joint session in about another 20 minutes. Mr. Stello, I would like to commend you for the advance material that you have sent to the committee because I think it addresses a lot of the allegations that have been made against you, and it goes into great detail, and it shows a type of work ethic and involvement in detail that certainly you would need in this job.

REASON FOR ACCEPTING NOMINATION

You know, you cannot help but wonder when you are on these committees why a person in your position would even be willing to go through this process. What motivates you to be willing to go through the type of harassment you have had to endure to serve in this position, which is certainly a very vital position, one we need somebody in immediately?

Mr. STELLO. I guess I really did not know what I was getting into, for one. I am not sure had I known——

Senator WILSON. Do not talk him out of it.

Senator LOTT. I know it.

Mr. STELLO. Had I known, it would have bothered me a great deal, I am sure. It is troubling. It is troubling for me, for my family, to have to read the criticism in the newspaper. The attack even on my Italian ancestry, which I am very proud of, is very, very troubling and difficult to accept.

Perhaps my training at the NRC allowed me to accommodate it, but I have to tell you that—it may sound corny, but I just feel the desire that I want to serve my country. I have made the commitment. I am going to stay in Federal service. I have had opportunities to go to the private sector, and I could make a lot more money, and I just do not want to do that. I just get a great deal of—and I said it may sound corny—a great deal of satisfaction out of serving this great Nation of ours, and I want to do whatever I can to help my country, and that is why I am doing it.

Senator LOTT. You have already noted that there are several very serious, very difficult, very important matters that need to be addressed by the person in this position working with the Secretary of the Department and Congress. If we do not go ahead and get your confirmation completed, then there will be an additional extended period of uncertainty, and certainly that would not help. When was your nomination officially submitted to Congress?

Mr. STELLO. July 24, I believe it was.

Senator LOTT. So, it has been pending and it has been investigated in numbers of committees and individuals have been looking at it since July 24?

Mr. STELLO. Yes, sir.

REASON FOR ALLEGATIONS

Senator LOTT. I have looked at your background and this material that you have sent. I have looked at some of the allegations that have been made against you and certainly some of them are serious and should be investigated, but I think they have been satisfactorily answered, and I have continued to ask myself, why all this flap about you? Is it your perception that it is because you basically support commercial nuclear power development?

Mr. STELLO. No. I have struggled with trying to find the answer. Here I sit and I have had to give you a book with 14 issues in it to explain charges that have been made.

I think the first part of the answer is that the Chief Operating Officer of the Nuclear Regulatory Commission is the responsible official and as such that I ought to be held accountable and responsible and expected to explain the activities of the 3,300 people that work at the Nuclear Regulatory Commission and anything that we do that is called into question and subject to debate and criticism. I assure you that there isn't anything that you could do with nuclear power that is not going to get a great deal of scrutiny and criticism.

In many cases the industry has been very critical of us. You do not hear much about that because we have over-regulated and run the cost of nuclear power up so high where maybe it is no longer an energy alternative for our country, and we have had those accusations and they have been cast upon us over the years. Those people who are the critics of nuclear power, they say you do not go far enough. These led to allegations and charges.

I think as I look at the various allegations—and you have heard a lot of them mentioned—many of them that deal with charges against the Nuclear Regulatory Commission and, as its Chief Operating Officer, I get that label, and I am not wanting to walk away from it. It should be.

I think there are really two allegations, there are two issues that have been raised for which my direct and personal involvement is in question, and I think the conversation between Stello and Mr. Steve White from the TVA was one of those issues that was clearly something I did which somebody said I should not have done. I think that was subject to four independent investigations of which the conclusions are clear. Nobody has been able to support that there was something wrong with that, and I stand by my conviction that as the Executive Director of Operations if I cannot speak to a Chief Operating Officer of a utility, I cannot do my job, and I need to tell them candidly and plainly what I think.

And perhaps that is the other part of my problem. I say what I think, and I do what I believe is right, and sometimes people do not like that. I am aggressive. I am not a diplomat for sure. I certainly am not a politican, and I can be abrasive. I am all those things because I am very action-oriented.

I am not a consummate bureaucrat in the classical sense. It is easy—you would never have any allegations made of you or ever have any controversy. You sit back and just do not do anything. I cannot work that way. I like to see things get done and I am very demanding about it. And that brings about a lot of criticisms. Probably part of it is my personality and management style for sure, too.

I cannot stand the classical bureaucrat who wants to study something for another 6 months. If I give somebody an assignment, I want it done, and I expect it done on time, and I want a decision, I expect a decision. It creates problems. Part of it is my management style, but I think most of it has to do with the fact that I have been a regulator of nuclear power, and in our country, in fact, in the whole world, that is a very sensitive issue, and you are going to have a lot of controversy and criticism.

Senator LOTT. Mr. Stello, thank you very much. I am going to support your confirmation as quickly as possible. Thank you, Mr. Chairman.

Chairman NUNN. Thank you, Senator Lott. Senator Exon.

Senator EXON. Mr. Chairman, thank you very much. Welcome again, Mr. Stello. As chairman of the Strategic Forces Subcommittee, I have been intricately involved in this matter for some time. There are two key problems that we have: environmental restoration and the production of tritium. In my view, they are equal and must receive substantial attention, both from the standpoint of action by the executive branch, but also follow-up necessary funding to get the job done. And if you are confirmed in this position, we are going to be working very closely with you on both of these items.

So I want to go into some specific questions, if I might, with regard to how you view these issues and what you think from your knowledge at the present time we should look to as an ultimate cost over a period of years to get the job done. Certainly, tritium production and the restart of the facilities at Savannah River are absolutely critical, and you have already made that point. I am delighted that you have made it.

On the other side of the equation, the safety angle, I think you know that I have been very instrumental in providing additional money over and above that recommended by the President in the last 2 years in the budget. This was not nearly enough, but more than anybody else had suggested.

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Our committee also brought forth the major findings that lead to the establishment of a Defense Nuclear Facilities Safety Board. My first question of you is with regard to the Safety Board. We have recently confirmed the President's nominees for the Board. I am wondering if you are familiar with any or all of the members of the Safety Board, and what do you see your relationship, if confirmed, with those individuals? Also, how do you intend to implement the recommendations that they make?

Mr. STELLO. The first part of your question—I am very familiar with a number, but not all. Mr. Case I have known for 23 years; Dr. Kouts I have known for 23 years; the chairman of the board I have known for the better part of that time as well; Mr. Crawford I have known for a part of the time. The fifth member, I have only met for the first time very recently. I believe that all of them are very, very well-qualified for the job. I think our country has been very fortunate that those individuals were willing to serve, and I think they will do a very, very good job.

With respect to the relationship, I think it is very, very important at the outset to be very open, candid, to provide the information that the Board is going to need to do a responsible job in oversight. Unfortunately, I think the programs necessary to generate the kind of information it will need do not yet exist in the DOE and will have to be structured so that we can get the right kind of information and have the Board be able to follow and track what is really going on, as I think the Department must, at many of these facilities.

I think we have to have a relationship where there is no reservation, no hesitation, that the Assistant Secretary for Defense Programs will bring an issue to the Board, will tell the Board: I need your review, I need your insight, I need you to look at this for me, rather than to wait until the Board has to reach down and say: I think there is a problem here. Let me look at it. I think when that starts to happen, the Department and the Assistant Secretary are not doing their jobs.

Senator EXON [presiding]. Do you expect a close working relationship then?

Mr. STELLO. I think it must be very, very close. And I expect that the review and the counseling from that Board will, in fact, be outstanding.

Now, as a goal, I think that the Assistant Secretary should be developing programs for each and every one of these facilities so that when they are reviewed by the Board, hopefully the Board's review is confirmatory, that they say: That is a good job; go on and do it. That is what I think the Assistant Secretary ought to do, is just come up with a first-class review, a first-class program that is offered to the Board each and every time.

COST OF CLEANUP

Senator EXON. Mr. Stello, aside from the modernization of our production facilities, which has been something in and of itself, can you give us a ballpark figure as to how much money you think it is going to cost for the cleanup of the DOE facilities in the next 10 years?

Mr. STELLO. I have not really looked at the area at all. I do know there is a 5-year plan and the report has been issued. And it is a plan which includes the cost estimate.

With respect to the modernization, how much that is going to take, that study is underway and——

Senator EXON. Yes. I know that is underway, and I will follow up on that.

TRITIUM SUPPLY OPTIONS

If we are not successful in restarting the Savannah River plants, what other short-term or near-term availability of tritium is there to meet our nuclear deterrent requirements?

Mr. STELLO. The only other option that I see is, and it is not a near-term option—it would take several years—is the N-reactor, which has been placed in dry layup; it is being placed in dry layup as a contingency, in the event that that happens. But that will be very "iffy" as to whether that will be able to fulfill all of our requirements. In any case, our Nation will be in very serious difficulty.

NEW PRODUCTION REACTORS

Senator EXON. One last question. Looking now at the production side of the picture for a moment, from your knowledge at the present time, which do you see as the most promising and quickest options in new facilities that we could or should go to: a heavy water reactor at Savannah River, a high temperature gas-cooled reactor in Idaho, or a conversion of the WNP-1 reactor in Washington State? Which of those three options would you think, from what you know now, is the most promising and should be given the highest priority?

Mr. STELLO. Let me back up for a moment. One view that I do have is that, for whatever reason, our Nation has let its weapons complex be reduced to what I think is a very, very fragile single thread. And at the moment, that thread is broken at Savannah River. There is little redundancy and in many cases there is no redundancy for keeping our weapons complex in operation. So it is very vital to our country's security.

As I look to what is the most significant and important element of dealing with the need for redundancy, I have come to the conclusion that it is clearly with respect to tritium production. I, therefore, would urge that there be at least two new production reactors, and that some sense of urgency of getting about dealing with that issue be undertaken by everyone involved. The reactors at Savannah River, as you know, are very old. How long they are going to be operating is questionable. So the new production reactor issue is very, very important.

Senator EXON. Which reactors——

Mr. STELLO. I cannot say, but I would say that it is my view, based on my experience, that I would like at least two, and I would like them to be of different design, so that if there is something inherently flawed in a design for whatever reason, unknown or unpredictable, that causes it to be out of service—the idea of diversity in the design, I think would be important. So I would prefer different designs in at least two.

Now, which ones they ought to be, that particular issue is currently being studied. As I understand it, the report is being prepared and they expect a decision on that issue in late 1991 or early 1992. That study is going to look at all of the questions you just raised, whether it is a gas reactor, heavy water reactor using WPPSS or some other reactor.

Senator EXON. Does that also include the WNP-1 reactor in Washington State?

Mr. STELLO. That will be included in the study. And I believe that we ought to wait until we see the results of that study and the pro and the con and the benefit arguments that go with it so that we can make the correct and the right choices.

I am saying that as a personal observation. What I have seen—I hope you do understand, however, that as Assistant Secretary for

Defense Programs, I would not be responsible for that particular activity. That has been assigned to a separate office under Mr. Maneta, and he will be responsible for dealing with that issue, not I. I have given you my observations based on what I have seen within the DOE from the time I have been there. And my professional recommendation is clearly, two reactors, at least two and, I would strongly urge, of different designs, because it is so critical and important to our weapons facility complex.

Senator EXON. Thank you, Mr. Stello. Senator Bingaman.

Senator GLENN. Mr. Chairman, could I ask when we are going to break?

Senator EXON. We are going to break at quarter of, as was announced by the chairman when we started.

Senator BINGAMAN. Mr. Chairman, I propose that both Senator Wirth and Senator Glenn were here ahead of me, if you are taking the early-bird rule.

Senator EXON. I am sorry. I was advised that you were next. I believe that Senator Glenn is next then.

Senator GLENN. Thank you, Mr. Chairman. I, first, would like to know when the book became available. Senator Warner referred to that as having all of the information in it, and Senator Lott has indicated he has read the book. That is quite a book. And I got mine yesterday afternoon, I believe. Where did that thing come from? Did it come from the Department of Energy or where did we get it and why was it not available, because I have not even had a chance to even read the cover page yet. We got it late yesterday afternoon. It supposedly has all the answers. Can anybody answer, any staff or whoever?

Senator EXON. The chairman does not know. Could staff answer the question that Senator Glenn has just raised? When were these books available and when were they distributed?

Mr. MANSFIELD. Sir, the book was prepared by Mr. Stello. It was provided to the staff last week and it was provided to all the members either yesterday or the day before yesterday.

Senator EXON. Does that answer your question, Senator Glenn?

Senator GLENN. Yes. I do not think it is a very good procedure, but outside of that it is all right. Yes. I would like to have it. It is supposed to answer all the questions that I am going to ask in the series of hearings we are going to have, and I did not get the thing until yesterday afternoon. So anyway, that is beside the point. We can handle it.

Number two point, Senator Warner said that he thought that this hearing was about those who favor nuclear programs and those who oppose them. Now there may be some organizations, Mr. Stello, that view this thing in that light, but I think that is flat wrong. I do not agree with that at all. It is not a matter of those who oppose or do not oppose; I think every member of this committee wants to see a strong nuclear program, particularly in defense industries, and does not want to get caught short there.

But what I view this as, is not even on DOE policy. I think our job basically is to determine your characteristics and methods of operation, which are subject to different views and interpretations. But you do have a track record at the NRC, and the question is whether that should be transferred over to the Department of

Energy. And I think that is the basic thing that will be the focal point of much of our hearings.

The four basic issues that have come up in other hearings on the Governmental Affairs Committee that I chair through the years, through several years that you are aware of, I think would probably summarize into several areas.

It is not only, as you said, that you are an aggressive person; you like to take action. I think there are those that you have worked with in the past that would claim that you are, maybe, overly aggressive, perhaps to a fault. The word, when you sometimes do not get your own way, the word bully has been used. Now I, let us just say, you are aggessive and—very aggressive. So that is one issue that we want to address and ask some questions about.

The second area is the relationship that you have had with industry in your past job through the years.

The third area is the allegations by the Department of Justice that there was interference with ongoing investigations there.

And the fourth area is improper interference, as some people saw it, with regard to some of the Inspector General investigations.

NOMINATION PAPERWORK

So those are some areas that we want to get into. Before we get into that, however, I would like to ask, do you have any idea why all the paperwork is not in yet? I was surprised we were even having a hearing this morning. I did not know until this morning when we came here that we do not have that. Can you tell us why the paperwork is not done yet? Your nomination was submitted July 24.

Mr. STELLO. As of last night, I understood that there was one letter from the White House that was due. And what I heard this morning was all news to me. I do not even understand some of the documents you are referring to, so I have absolutely no knowledge and I cannot offer you any explanation. I assure you I will try to get an answer.

Chairman NUNN [presiding]. Mr. Stello has not delayed anything. He has cooperated fully and gotten all of his information in on time and in a timely fashion. This is simply, I am sure, an oversight, I would think. But the Justice Department has had the letter from Boyden Gray since October.

Senator GLENN. We are 4 months into your nomination or approaching that, and for them to still be having problems with the paperwork over at the White House, I just do not understand at all. But if that is a problem, that is a problem.

Mr. STELLO. All I can say, Senator, is I was aware of an FBI report, and you recall, it came up at a hearing that you conducted. I thought it was important because it doubled one of these issues you have raised. It exonerates me. And I thought it was important for the committee to have it. I was told that that report, in fact, was made available to the committee. What I think I am hearing now is that maybe it is not. So I do not know.

Chairman NUNN. No. The FBI report has been made available.

Mr. STELLO. It has been made available?

Chairman NUNN. This is other material that we have written specifically for. That is not the FBI report; we have that report.

Mr. STELLO. Thank you.

Senator GLENN. Mr. Chairman, I know that we are due to break here in about 3 minutes. And I know that Senator Wirth had a minute or two of comment that he wished to make here, and I think I have outlined the four different areas that we want to get into later. Now I will go back and start plowing through the big book here, which I just got, and see what kind of responses we have in there. But those are the areas that we wanted to get into later, and I would yield a couple of minutes of my time to Senator Wirth before we have to break.

Chairman NUNN. All right. Then Senator Kennedy would like to be recognized for 45 seconds. Let me repeat. We are going to start back at 2 o'clock this afternoon. We will take all afternoon and everyone will have a chance to go into whatever questions they need to go into. Senator Wirth and then Senator Kennedy.

Senator WIRTH. Thank you very much, Mr. Chairman. I had made an introductory comment, but I wanted to go back and focus on again why we are here.

This is not an issue of being for or against the nuclear power industry, as Senator Glenn has pointed out. Nor is it an issue of being for or against cleaning up the mess that we currently have or the urgency of doing so. It is not for or against arms control. That is not why we are here. What this is, is a question of the confirmation of a nominee for an extraordinarily important job, the Assistant Secretary of Energy for Defense Programs.

This must be an individual of paramount personal integrity; an individual of unusual judgment, who weighs national security interests in the light of very serious health and environmental impacts resulting from the nuclear weapons program, in a world further complicated by the remarkable events going on in Central and Eastern Europe today. Further, these are hearings on an individual who must confront a bureaucracy that has paid lip service to health and safety, and finally, to an individual who can restore confidence to a public whose confidence has been deeply shattered.

Those are at least four elements of what this is all about, Mr. Chairman. And I hope that we once again keep in front of us what the elements are and not have ourselves drawn off in tangential areas irrelevant to what we are here to do. Thank you, Mr. Chairman. I thank the distinguished Senator for yielding.

Chairman NUNN. Thank you. Senator Kennedy.

Senator KENNEDY. Thank you, Mr. Chairman. I appreciate just having a moment to address this nomination, and I will ask that my statement be put in the record. I regret I cannot be here this afternoon.

Chairman NUNN. Without objection, your entire statement will be put in the record.

Senator KENNEDY. Mr. President, I intend to oppose this nomination. Those of us in New England, and particularly in Massachusetts, have seen, over the handling of the Seabrook Nuclear Power Plant, what I believe has been a corruption of the processes and procedures to protect the public health and safety of the people in the region, in my State, and in the neighboring States.

I think any fair evaluation of the changes, the request in the procedures, which have a very direct impact, including the local concerns and the State concerns, the public health concerns, public safety concerns, could not reach any other conclusion that, during the time of this nominee's responsibility in the NRC, that these requirements, these mandates under the laws, these past procedures, have really been run roughshod over. And I will view with interest the nominee's response to those kinds of alterations or changes. But I, quite frankly, feel compelled to oppose that nomination.

I do not know in other situations in other parts of the country how this nominee considered those issues. But quite frankly, they do not represent to me, the way that he proceeded, to permit me to vote and support him in this extremely important role, which will have public health and safety issues before it. And I cannot, in good conscience, support that nominee. I appreciate the chance to put the statement in the record.

[The prepared statement of Senator Kennedy follows:]

PREPARED STATEMENT OF SENATOR EDWARD M. KENNEDY

Few nominees have arrived before this committee with a longer train of excess baggage than Victor Stello, Jr.

Many of the issues involve complex questions of administrative law and NRC investigative procedures which have already consumed countless hours of congressional hearings and investigations. That in itself is part of the explanation for the widespread opposition to this nomination. The operations of the NRC have become so opaque, so convoluted, so byzantine, and so out of touch with Congress and the country that people have lost faith in those charged with regulating nuclear energy operations. Given the senior NRC management positions occupied by the nominee since the inception of the agency, he bears a major share of the responsibility for this impasse.

Mr. Stello is also well known to us in Massachusetts as the senior NRC official who sought and obtained changes in the NRC rule that had required emergency response plans to be approved by the State government before a nuclear power plant can receive an operating license. Mr. Stello asked the Commission to approve a new rule eliminating the requirement for State and local government approval of evacuation plans, and authorizing utilities to submit their own plans if those governments refuse to cooperate.

The position taken by Mr. Stello and his staff on this matter has an alarming Alice-in-Nuclear-Wonderland quality to it. The very premise of the revised rule—that there can be "adequate assurance" of radiation protection for the public without State and local government cooperation in emergency planning—is absurd on its face.

I reject the view that significant public health and safety risks may be imposed on a State without first gaining the consent of the State to a plan for mitigating or avoiding those risks.

When he asked for the change in the rule on emergency planning in February 1987, Mr. Stello asserted in a letter to the commissioners: "When the Commission's emergency planning requirements were upgraded in August 1980, the Commission believed that all affected State and local governments would continue to cooperate in emergency planning throughout the lifetime of the license."

This is simply not supported by the record, and the difference I have with the nominee on this point reflects a fundamental difference in approach to the issue of nuclear safety and nuclear regulation. According to then Commissioner Ahearne, the Commission "discussed at length the possibility the plant could be held hostage to local opposition" if State and local governments participated in evacuation planning. However, in the wake of the Three-Mile island accident, the Commission concluded that "it was more important that emergency plans be developed."

Mr. Ahearne's view is supported by Peter Bradford and Victor Gilinsky, both commissioners at the time. According to Mr. Bradford, the Commission decided, "if a State can legitimately demonstrate that evacuation can't effectively be planned for, the plant shouldn't operate. That is why the rule is meaningful."

And Victor Gilinsky has stated, "once you decide you need off-site emergency preparedness you're forced to rely on the police powers of State and local authorities . . . whatever one thinks about how State and local governments behave, you can't retreat from that proposition."

Contrary to Mr. Stello's assessment, the essence of the Commission's 1980 emergency planning requirement was that active cooperation of local governments is essential for meaningful evacuation planning.

In the case of Seabrook, the prospective licensee and the NRC could have reached a determination on the evacuation issue years ago, long before the plant was completed. The fact of the matter is that the NRC staff did not take its own emergency planning rule seriously. The plant went ahead without consideration of the major new investments in roads and bridges that might be required in order to obtain an "adequate" level of safety through emergency evacuation, and without consideration of the possibility that even these improvements might fail to support a determination that adequate levels of protection could be achieved in the event of a major radiation release.

However, the applicants and the NRC staff opposed every effort to make the "adequacy" determination at an earlier time, choosing instead to gamble that somehow the State and local governments could be induced to overlook the inherent difficulties of evacuation in the area around the plant.

Not only has Mr. Stello sought to disenfranchise the people of Massachusetts by removing their elected representatives from the evacuation planning process, but under his leadership the NRC staff has consistently opposed any definition of what reduction in exposure levels would be considered "adequate" protection. Through successive procedural manipulations, the NRC's definition of an "adequate" level of safety in the Seabrook case has been deprived of any substantive meaning.

A more forthright and honest approach would have been for Mr. Stello and the NRC staff to request the elimination of the evacuation planning requirement altogether, rather than burying it under pounds of spurious rulemaking. In effect, this is what the Seabrook license applicants did when they petitioned for a rule waiver in order to shrink the emergency planning zone to 1 mile, thereby removing the Massachusetts towns and the problem of the New Hampshire beaches from the zone.

Over a month before this 1-mile waiver petition was denied by the Licensing Board, in April 1987, Mr. Stello met with the Seabrook applicants and advised them to simultaneously pursue another path to obtaining a license. In my view, the transcript of this meeting substantiates the charge that Mr. Stello in effect "coached" the Seabrook applicants on how to obtain the maximum benefit from the yet-to-be decided rule change by incorporating Massachusetts evacuation plans into *their* proposed emergency response plan.

However, by maintaining the 10-mile evacuation zone, this NRC staff strategy for licensing Seabrook still failed to dispense with the problem of the New Hampshire beach population. In June 1987, the Federal Emergency Management Agency filed its position on the beach population, stating that "using standard guidance for the initiation and duration of radiological releases and the estimated evacuation times in the New Hampshire plan, it appears that thousands of people could be unable to leave during an accident at Seabrook involving a major release of radioactivity without adequate shelter for as much as the entire duration of the release. Therefore, until these issues are resolved, even if all the other inadequacies and deficiencies . . . of these plans were to be corrected, FEMA would not be able to conclude that the New Hampshire State and local plans to protect the public in the event of an accident at the Seabrook Nuclear Station are adequate to meet our regulatory standard that such plans 'adequately protect the public health and safety by providing reasonable assurance that appropriate protective measures can be taken offsite in the event of a radiological emergency.' "

To my knowledge, despite the thousands of pages of legal maneuvering on this issue, the factual basis of this FEMA position has never been disputed by any party or any witness. The fact remains that thousands of people might be unable to leave the beach during the period of maximum danger from the passing radioactive plume.

However, this FEMA position came under attack from Mr. Stello and the NRC staff. At a meeting on January 19, 1988 between FEMA and the NRC, those in attendance have testified that Mr. Stello said that the two agencies "would go to war" if FEMA attempted to interpret the NRC regulations as requiring a sheltering option for the beach population. Since timely evacuation is not feasible for a large segment of this population, FEMA's position logically required development of a sheltering option before a license could be issued.

Six days after Mr. Stello delivered his threat, FEMA filed new testimony suggesting that if New Hampshire had "adequately considered" the sheltering option, and provided a technical basis for its decision, the New Hampshire plan "could be" found adequate. The State responded a few weeks later by stating that it would not rely on sheltering except to protect an alleged "2 percent" who might be at the beach without their own means of transportation. For these unlucky persons, FEMA responded that the State of New Hampshire would have to provide "implementing detail."

In fact, however, in its decision approving the New Hampshire plan, the NRC Licensing Board ignored FEMA's position on sheltering even these 2 percent of beachgoers, and went on to conclude that New Hampshire had given "adequate" *consideration* to sheltering, not that proposed sheltering measures would *in fact* provide "adequate" protection for those who could not be evacuated. Moreover, all this was achieved without ever rebutting the facts concerning the real obstacles to evacuation originally identified by FEMA.

Through such paper shuffling exercises, Mr. Stello and his staff managed to reduce a real statutory requirement for protection of the population into a procedural checklist that will not protect anyone from anything.

On November 7, the NRC's Atomic Licensing and Appeal Board reversed the endorsement given by Mr. Stello and the Licensing Board to the New Hampshire Radiological Emergency Response Plan, citing four specific deficiencies in the plan. However, on November 13, the NRC Licensing Board went ahead and issued a decision that "the New Hampshire Radiological Emergency Response Plan is implementable."

"The Board has carefully . . . studied the Appeal Board's directions to this Board. We conclude that those issues and directions do not preclude *the immediate issuance of an operating license for the Seabrook Station.*"

This is an absurd situation: The law states that reasonable assurance of adequate emergency protection for the public must be demonstrated before issuance of an operating license for Seabrook; the Appeal Board finds that the New Hampshire Emergency Plan cannot be approved pending resolution of still outstanding issues, and remands these issues for resolution to the NRC Licensing Board; the Licensing Board finds that despite the lack of an approved emergency plan for New Hampshire residents—including 70,000 summertime beachgoers—the requirements for a license have been met, and the Board goes ahead and authorizes the issuance of a license; and in the meantime, the underlying reality of the Seabrook situation remains the same. There are no realistic sheltering options for the 70,000 beachgoers, and it will take at least 6 hours to evacuate everyone from the barrier beach unless new roads and bridges are built to the mainland and through the evacuation zone. These thousands of people are still completely at risk, and the New Hamsphire plan contains no serious strategy for reducing the potential exposure to these people.

I have dwelled on the Seabrook case not only because it is very important to the citizens of my State, but also because it amply demonstrates that during Mr. Stello's tenure at the NRC, at least one aspect of the nuclear regulatory process degenerated into legalistic shadowboxing that bears no relationship to the underlying political and technical realities.

Mr. Stello and his staff managed to reduce a real statutory requirement for protection of the population into a procedural checklist that will not protect anyone from anything.

Given the controversy that this nomination has generated in other parts of the Nation, it is obvious that others feel that breakdowns in the regulatory process may have occurred on other issues as well.

If emergency response planning is to remain a meaningful technical component of the licensing approval process, and if preparation and execution of these plans depends on the active cooperation of local governments, then I fail to see how adequate protection of the public can be assured if these plans are formulated by licensees and approved by the NRC without the informed consent and full cooperation of State and local government.

And without any prescribed minimum dose rate reduction factor for establishing the "adequacy" of various emergency response plans, I fail to see how Mr. Stello and the NRC staff could have recommended that any given plan offers "adequate" protection.

I have great respect for Admiral Watkins and for his attempts to reform the safety and environmental practices of the Department of Energy. But I do not believe that Mr. Stello is the right choice for the critical position of Assistant Secretary for Defense Programs.

Chairman Nunn. Thank you, Senator Kennedy. Mr. Stello, you will have a chance to answer all of these questions again this afternoon and whatever time is necessary tomorrow.

I would also put the various individuals on notice that, if requested to testify on this nomination, that we will be having some hearings on Friday, and so I hope they would be prepared. Our staff will be in touch this afternoon to try to arrange an appropriate schedule. We are going to try to do something tomorrow afternoon, and we will also do something Friday morning. So some witnesses will be called tomorrow afternoon.

We anticipate, Mr. Stello, we will complete your part of this this afternoon. It may be necessary to call you back though, after the other people have testified. So we will have to keep you on call.

Senator Warner. Mr. Chairman, I think the opportunity would be given to Mr. Stello to come back, if he requested that.

Chairman Nunn. That would certainly be my intention. As you know, it depends on when we get through and how much time we have left.

Senator Warner. Yes.

Chairman Nunn. We will try to accommodate all points of view. Mr. Stello, thank you for being here this morning. We will recess until 2 o'clock and return to this room.

[Whereupon, at 10:47 a.m., the committee was recessed.]

NOMINATION OF VICTOR STELLO, JR., TO BE THE ASSISTANT SECRETARY OF ENERGY FOR DEFENSE PROGRAMS

WEDNESDAY, NOVEMBER 15, 1989

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC.

AFTERNOON SESSION

The committee met, pursuant to notice, at 2:06 p.m., in room SR-253, Russell Senate Office Building, Senator J. James Exon presiding.

Committee members present: Senators Exon, Levin, Bingaman, Glenn, Gore, Wirth, and Cohen.

Committee staff member present: Arnold L. Punaro, staff director.

Professional staff members present: Sherri Wasserman Goodman and William E. Hoehn, Jr.

Minority staff members present: Patrick A. Tucker, minority staff director and counsel; Romie L. Brownlee, deputy staff director for the minority; and George W. Lauffer and John E. Mansfield, professional staff members.

Staff assistants present: Barbara L. Braucht, Cindy Pearson, Kelli J. Pronovost, and Melissa A. Ramsey.

Committee members' assistants present: Jeffrey B. Subko, assistant to Senator Exon; Christopher E. Paine, assistant to Senator Kennedy; John Gerhart, assistant to Senator Bingaman; Leon S. Fuerth, assistant to Senator Gore; Jefferson B. Seabright, assistant to Senator Wirth; Terrence M. Lynch, assistant to Senator Shelby; James M. Bodner, assistant to Senator Cohen; Robert M. Soofer, assistant to Senator Gorton; and Charles G. Pearcy, assistant to Senator Lott.

OPENING STATEMENT BY SENATOR J. JAMES EXON, PRESIDING

Senator EXON. The committee will please come to order. Before we begin, I have an announcement to make on behalf of Senator Nunn. Senator Nunn has indicated that the committee will meet tomorrow at 2 p.m. for a continuation of this hearing after we finish today. It will be in the Hart Building, room 216. At that time we are scheduled to hear from outside witnesses, both supporting and opposing the nomination of Victor Stello. So all please take note of that, Hart 216, tomorrow at 2 p.m. We cannot have a meeting in the morning because the Armed Services Committee has a long-scheduled matter to take up, the matter of the battleship *Iowa*. We have to proceed with that, but we will be going back to this hearing at 2 p.m. as I have indicated.

Next up for questioning, Senator Bingaman.

Senator **Bingaman**. Thank you, Mr. Chairman. Mr. Stello, let me ask a few general questions here. I have not had a chance to review the full report that you submitted to us last week, but I hope to look over that in the next day or so.

One of the concerns which I have, quite frankly, is that your experience seems to be in the area of nuclear reactors, and there is a great deal in the defense nuclear program that would be under your jurisdiction in addition to the running of nuclear reactors.

I guess that my question more particularly relates to some of the work that is expected and going on at our national laboratories that is not directly tied to nuclear reactors. We put some new missions in the Department of Energy this year in the Defense bill. One of them was to pursue research in verification technology for arms control.

QUALIFICATIONS OF MR. STELLO

Could you tell me your thoughts as to your qualifications to oversee that kind of activity and your views as to the appropriateness of that kind of activity for the Department of Energy?

Mr. **Stello**. First let me speak to the general question of the Nuclear Regulatory Commission's responsibility. We have the responsibility, as you correctly pointed out, for regulating commercial nuclear power plants, but we also have the responsibility under the Atomic Energy Act to regulate facilities in general. There are, in fact, 10,000 other licensees, responsible materials licensees, fuel fabrication facilities, many of which are quite similar to other facilities within the Department.

The concept of the safe facility operation apply equally well whether it is a fuel processing fabrication, a canyon for fuel separation, or a reactor, which are the bulk of the facilities within the weapons complex responsible for weapons production. The attention to details, the procedures, the training all are as applicable to those facilities as they are to reactors, and they are quite similar in their general vein as to some other facilities that the NRC does in fact regulate.

The NRC, as you also are aware, when it was formed and split off from the Atomic Energy Commission, retained with it a research department. It is not nearly as large in terms of dollar expenditures, but it covers a wide spectrum of very complex experimental programs dealing with a lot of the same kinds of issues that are dealt with in our laboratories. In fact, I am quite familiar with the Department of Energy laboratories because much of that work that I am referring to is done in our country's national laboratories.

With respect to weapons verification and the process and procedures that ought to be there, yes, I think that is very appropriate for the Energy Department to be involved with. It has collectively the most knowledge about nuclear weapons and their behavior and the ability to detect and verify weapons by all mechanisms.

The kind of research that is going on that I am familiar with is not foreign to me. I have, because of previous work, been aware of some of the activities that have been involved that can be used because of other work that we have done. So I feel fairly comfortable dealing with those kinds of issues and feel that my background would allow me to do that.

One area I have not covered is nuclear weapons. I certainly am not a nuclear weapons designer. I do not pretend to be. I do not know a great deal about it, but I think I know the principles that deal with safety; and based on my limited time to understand it, I see these same principles as needing to apply to something like our weapons program as well, and in fact they do.

Senator **Bingaman**. To take another slice at the same set of issues, many of us are of the view that when you look at the technology base of the country and at where our scientific talent is focused, a lot of that technology base resides in those national laboratories. Fortunately, a couple of them are in my home State. Across the country, some of that real talent resides there.

I think that in the Defense bill which is being debated on the floor at this very moment, Congress has finally decided to at least eliminate some of the legal barriers to those laboratories involving themselves in research consortia with the private sector and working on problems other than nuclear weapons production and design, other than even conventional weapons improvements.

My concern has been and still is that in the process of cleaning up this major environmental mess that all of us are now aware of in the nuclear weapons production complex, the Department of Energy will of necessity rob from that technology base resources and essentially will divert its focus from pursuit of that technology base and strengthening that technology base and become so preoccupied with this cleanup effort over the next decade or so that many opportunities will have been lost.

ENVIRONMENTAL RESTORATION

I would like your general reaction to that and whether you think the DOE and your office in particular, since you would be in charge of all of it, can clean up both the weapons complex and the good share of the forward-looking activity that is presently going on. Do you think it can all be done?

Mr. **Stello**. It must be done. I would make two points. One is that the whole issue of environmental restoration and handling our weapons waste is an issue that has been with us now for many, many years. I think the Secretary has taken that issue head on. He has put together and has announced a 5-year plan. He has proposed an organization within the Department where they will be charged with this task. Those responsibilities that had been assigned as part of the defense programs will be transferred to this new organizational component. I think that is the right thing to do to make sure that issue gets the visibility, the treatment, and the commitment both within the Department and Congress to be sure that task is in fact completed.

With respect to the second point, I must tell you that I have a very, very serious concern over what I consider to be our country's leadership role in the technology that we founded in nuclear power.

I neglected to mention we have, in addition, about 80 research facilities throughout the country that we regulate. At the NRC we had an opportunity to interact with a number of people that are involved with research. Many of our leading scientists now have to go to foreign countries, to do a lot of their basic research because we are losing the edge within our national labs and within our research community. This potential loss of our technology edge is something that I share, and I think that was the thrust of your concern, that I think we ought to be very, very careful about.

Our country has been a leader for many, many years. I am not so sure that in this day and age in many research areas in this field we are, in fact, still the world leaders that we had been.

Senator **Bingaman**. My time is up, Mr. Chairman.

Senator **Exon**. Thank you, Senator Bingaman. We will go to a second round in just a few moments.

TRITIUM SUPPLY

We talked some this morning before running out of time about tritium. We discussed options if we do not get the Savannah River facility back on line a year from now. I asked the question, is there anything else we could do to provide tritium if we did not get that facility back on line? I did not pursue it as much as I wanted. I want to pursue that a little bit further now.

Let us assume for the moment that we would not have the Savannah River reactors operating a year from now, and let us suppose that we received word that we, therefore, were beginning to unilaterally disarm a portion of our strategic deterrent because of the unavailability of tritium. Is there a possibility that, under such circumstances, we could go to some of our military allies for tritium, perhaps on a loan basis until we could get back into production?

Mr. **Stello**. Senator, I am reasonably new to the Department and I know this subject very quickly gets into classified information. I believe I can safely say those and many other options have been considered. I do not think they are viable.

Senator **Exon**. You do not think they are viable?

Mr. **Stello**. I do not think they will answer the question.

Senator **Exon**. Some of this is classified. We have had some testimony on this in open session, though, from various Energy Department officials. I would hope that if you are confirmed that you would review this proposition. I just think it is important that we have a fall-back position in case we would come up against a scenario that I have just outlined. It seems to me that there may have to be some changes in treaties and things of this nature, but it does seem to me that if we should reach that impasse, we should at least see if there would not be additional sources of tritium in the world today so that we might be able, as a last resort, to tap that source. I think it should be looked into in more detail.

Mr. **Stello**. I would definitely commit to continue to do that, because I think it is, as you say, very, very important to our country.

Senator Exon. Let me give you a chance—we touched on it some this morning. Maybe you would have some additional ideas.

MODERNIZATION STUDY

Undoubtedly, you have reviewed the DOE modernization plan. Have you had the opportunity to review this plan in any detail at all with regard to the modernization plans for our nuclear weapons complex? What are your general thoughts on the plans? What changes, if any, do you think are necessary? Do you think that we are currently looking at a realistic budget request for these modernization plans?

Mr. Stello. I guess maybe I ought to make a general observation. In all of the facilities that have gotten into difficulty in the Nuclear Regulatory Commission, and they needed to pay attention to them and fix them, it has been a very expensive proposition, as you are aware.

The examples: the TVA facilities, all five of them; Davis-Bessy; Rancho Seco, which has gotten quite a bit of publicity and been very expensive; Peach Bottom, which was down for many years, very, very expensive; and Nine Mile Point, a facility which is still down. It is expensive to restore these facilities when they get into difficulty, so the idea of just fixing them up and bringing them up to standards, which we would all like to see, in and of itself, will be difficult.

Now, compound that with the issue of modernization. There are some very, very difficult questions that I think need to be asked, studied, and addressed, and I do not know the answers, but let me give you an example without getting into much detail or classified information.

A fundamental, philosophical question: are Congress, the Department of Energy, and the country willing to accept a weapons complex which does not have redundancy? That is, if a single facility fails, that the whole weapons complex is out of commission. I am of the view that that would be fundamentally wrong. That is one of the major issues that I think in my mind led me to conclude that the modernization study that had been submitted to Congress needed to be redone and those kinds of questions needed to be asked, answered, and studied in order to get a reasonably good picture for Congress and the Department of what decisions it ought to make, because some of them are very, very fundamental and very important to our country.

Senator Exon. Thank you, Mr. Stello. My time is up. Senator Bingaman.

Senator Bingaman. Mr. Stello, one of the issues we dealt with in the Defense bill again this year, in the report, really, was the whole issue of how to build in incentives and sanctions to require contractors to do a better job with environmental compliance, safety concerns, and health concerns.

RELATIONSHIP WITH CONTRACTORS

One suggestion was that the Department of Energy put provisions in contracts where we would deduct penalties from the fee we were paying the contractors if they fail to comply with environmental laws or otherwise fail to accomplish what was done. Is this something that you support? Does this make sense? Has this been done, to your knowledge?

Mr. **Stello**. It has been done. Secretary Watkins has issued a policy where the fees, 51 percent of the judgment would be based on health and safety. I fully support that that is the proper way in which to put emphasis to the contractor.

Senator **Bingaman**. Now, that is not in the case of a violation of law. That is in the decision of whether to do another contract, is that right?

Mr. **Stello**. There are pieces. The first piece is in the award fee, the contract. It is not so much the 51 percent, I do not think, that is really the issue as much as it draws attention to saying production is not the issue here. Safety is first; production is second. It is important, but let us get safety where it belongs.

The second, as I understand the way the new legislation is constructed, would allow the Department to issue a set of regulations and develop a system of enforcement, including civil penalties of contractors. That, to me, is also important because it allows the Department to reach out where the contractors are not doing what they should have been doing and going directly to the issue and calling it to their attention rather forcefully through an enforcement process.

The third element, and the one that I think is needed desperately and which I have described in my testimony, is a system where the Department really can go out and make intelligent, detailed assessments of what the real problems are in these facilities.

We have a number of techniques that evolved over the years in the Nuclear Regulatory Commission. We worked very, very hard to implement them. One of those, for example, is called a systematic assessment of licensee performance, a way once a year to go back and sit down and make that assessment. There are a number of other tools, performance indicators, systematic assessment of licensee performance, resident inspectors, and then we pull together in a senior management meeting of the agency and sit down and try to sort out what is wrong, the basic philosophy being where are the real problems in the facility, what needs to be corrected.

The Department needs that kind of a process in place to really do a good job of assessing, to not let facilities get to where they are so bad your alternative is to shut them down. I think you need to be able to identify the problems before you get that far.

Those are the three points that I think are important so that we do not have this concern anymore in the future.

Senator **Bingaman**. My perception of one of the reasons we have gotten into the situation we have with the nuclear weapons complex is that there has not been an arms length relationship between the Department of Energy and some of the contractors. In many cases, the Department of Energy essentially delegated to the contractor the responsibility to do the governmental function, which was to oversee and ensure that what was required by law was in fact being accomplished.

Many of these allegations to which you have had to respond in this letter or this report that you gave to us are basically allegations that you were too close to contractors and that you were not sufficiently arms-length in your dealings with some of the contractors with whom you have had experience or responsibility for regulating. Could you comment as to whether my characterization of that problem in the DOE is accurate and how you see that relating to your own situation and all of these various charges to which you have already responded in detail?

Mr. **Stello**. I can accept the description you have given of the relationship with some DOE contractors. The DOE just has not had the oversight, the tools, the competence, the people to go in and really make the assessment and had to pretty much let the contractor do the whole show. Some of it has been especially troubling to me, and I will give you an example I found to be particularly troubling.

I learned that the Department of Energy, when we would go for NPDES permits, for the pollution discharge permits, would sign both as the owner and as the operator, and the contractor would not. I found this to be very, very disturbing. I believe the correct policy is that the Department of Energy owns the facility, it signs as owner, and when you apply for these permits the contractor ought to sign as the operator, be held accountable and responsible right from the beginning with the application of the permit itself. I have not been very pleased with the way things have gone, and I think they need to change, so I would be certainly committed to making those changes.

It is not just me. The accusation has been that the Nuclear Regulatory Commission has been cozy with the industry. I have tried to recall the best answer to that, and I think it was Chairman Carr's answer in a couple of the committee meetings. It just simply is a bum rap. I think that is probably the best answer I can think of. It is a bum rap. The Nuclear Regulatory Commission has been a very forceful and strong regulator, and I think if you sat down and you talked to some of the people we have regulated, they will tell you that clearly and up front.

We in the NRC have a record right now that I am proud of. The NRC can demonstrate to you and show you with data where the commercial nuclear power plants today are much safer than they have been. That is our mandate, and I think we can demonstrate that. I do not think you demonstrate that because you are cozy. I think you demonstrate that because you are doing your job, which is safety. I think that is what the NRC did. So I am like Commissioner Carr. I think it is a bum rap.

Senator **Bingaman**. My time is up. Thank you, Mr. Chairman.

Senator **Exon**. Thank you, Senator Bingaman. Senator Levin.

TESTIMONY OF MR. GREENSPUN

Senator **Levin**. Mr. Stello, there was some testimony a couple of years ago before the Governmental Affairs Committee, which Senator Glenn chairs and of which I am a member as well as other members of this committee, including a statement by a man named Julian Greenspun who said that, while he is now in private practice, for the past 15 years he had held a variety of Federal prosecutor positions in the United States Department of Justice, including from 1979 to 1986 when he was the Deputy Chief of Litigation in the General Litigation Section of the Criminal Division. Are you familiar with his testimony before the Governmental Affairs Committee?

Mr. **Stello**. Yes, sir.

Senator **Levin**. I would like to get your reaction to part of that testimony. He said that based on his extensive experience with the NRC, he can unequivocally state that he knows of "no other regulatory or investigative agency where senior agency officials have taken as many bizarre and seemingly deliberate actions intended to hamper the investigation and prosecution of individuals and companies in the industry as the agency regulates."

Then later on he goes on to testify that "one example of the NRC's obfuscation of a major criminal violation occurred at the Three Mile Island plant. Furthermore, I believe this violation may have been a contributing factor to the eventual meltdown at that plant. NRC regulations require that if a reactor was losing over 1 gallon of water per minute, the source of which was unknown, that the source of the problem must be found or the reactor shut down. The utility leak rate test for the 6-month period prior to that meltdown indicated that the reactor was continually losing more than 1 gallon of water per minute. However, the operators added water or hydrogen to the reactor and falsified the computer data to create acceptable leak rates on paper. In addition, the results of bad tests were destroyed. The NRC inspector, who also took part in the NRC's post-meltdown investigation, was aware of these unlawful actions at the time they occurred but failed to report them as violations. Needless to say, the plant was not shut down until the disastrous meltdown occurred."

After the meltdown, he testified, "one honest Three Mile Island employee spoke at length to NRC employees on at least two occassions about the unlawful falsification and disposal of the leak rate documents. This information was not passed on to the Justice Department. In fact, the NRC's initial investigation of TMI failed to even mention this information. Only when this whistleblowing employee was scheduled to appear on television did the NRC report these allegations to the Justice Department. Subsequently, the allegations were verified by the independent analysis of experts and the testimony of an NRC inspector at the site."

Just continuing for one more paragraph, "despite this, certain senior NRC officials continued to insist that the utility's conduct at TMI was acceptable. They adopted the utility's position that one, nothing prohibited the addition of water to the reactor; two, there was nothing wrong with the destruction of bad leak rate tests; and three, it was difficult to tell a good test from a bad test. It is my belief that these officials actively misled and even lied to the Justice Department in the TMI case. Perhaps most revealing, in a meeting with myself and other prosecutors, Mr. Stello, now Executive Director of the NRC, said that an investigation at TMI would be bad for the operators' morale and 'nobody is going to tell me how to treat my licensees.' "

I am wondering if you would comment on that testimony?

Mr. **Stello**. I would love to. First, Mr. Julian Greenspun was, in fact, the prosecutor in front of a Grand Jury. The FBI was asked to investigate this matter. I understand a copy of that FBI report was provided to the committee and the committee has it. I invite you to read it, and I think you will find it completely not only exonerates me but the agency.

A couple of points that ought to be made in addition. One, he is referring to an NRC inspector that knew of things before the accident with the inference something should be done about it. Of course, in hindsight it is always easy to say, surely, someone should have done something about it, and I could recite half a dozen other things where perhaps the accident might have been avoided.

To suggest that that inspector was me or that I should be held accountable because of what that inspector has done is a point I tried to make this morning. I fully accept as the operating officer for the Commission as its EDO that I need to go and defend what the agency does and why it was okay, but that was in 1978, the event I believe you are referring to, long before I was ever the Executive Director for Operations or the Director of the Office of Inspection Enforcement, and that individual was reporting up through a management chain.

I agree with the observation. Boy, it would have been nice had we done something more. We did not.

Senator LEVIN. Are you saying that the Office of Inspection and Enforcement then did not know about that information when it filed its report of investigation into the March 28, 1979, accident?

Mr. STELLO. That is the issue that was investigated by the——

Senator LEVIN. No, I am asking you whether or not you know if the Office of Inspection and Enforcement——

Mr. STELLO. By definition, because the inspector was an employee of the Office of Inspection and Enforcement.

Senator LEVIN. Other than that inspector——

Mr. STELLO. In 1978.

Senator LEVIN. Other than that inspector, did anybody else in the office know of that inspector——

Mr. STELLO. I do not think I can answer the question. I do not know all of who knew about——

Senator LEVIN. As far as you know, do you know if anybody else knew?

Mr. STELLO. Can I say from firsthand knowledge that I do? No. I can say from what I would have expected as normal review activities, at least the branch chief for that inspector would have known or should have known.

Senator LEVIN. Now did you say that an investigation at TMI would be bad for the operators' morale?

Mr. STELLO. Absolutely. I was very, very concerned. At the time that I was at TMI for the first 40 days following that accident, I was the responsible regulatory official for managing the activities on behalf of the Nuclear Regulatory Commission.

The operators were extremely stressed. The plant was in a configuration where none of us had ever analyzed it before. We had to develop new procedures and, in fact, had to do experimental work to determine whether, and to what extent these procedures would apply. Adding any further stress to the operators in the control room at that time, in my judgment, could have produced a very unhealthy environment for those operators to do their job, and any mistake, small mistake, had enormous health and safety consequences. I felt very strongly about it because my job was to protect the health and safety of the environment first and make sure that was adequately taken care of, and we would do the inspection when an inspection and the investigation could be done, but I would not allow myself to conclude that I was going to forego health and safety responsibilities and worry about investigations.

With respect to the issue of telling my licensee, I take my job at the NRC very, very responsibly, and I look to those licensees as being responsible to the Nuclear Regulatory Commission. They hold our licenses, no one else's, no one in the Federal Government other than the Nuclear Regulatory Commission, and I take our responsibility to oversee those licensees very, very seriously. I always have; I always will. I think it is very, very important. I believe it would be improper to allow anybody else to dictate what ought to be done with respect to the licensees in terms of conducting the licensed activity. Congress has set forth the independent Nuclear Regulatory Commission to do that job. I take it very seriously, and I am very serious about it. I would not hesitate to repeat they are the licensees of the Nuclear Regulatory Commission.

Senator LEVIN. Thank you. My time is up.

Senator EXON. Thank you, Senator Levin. Senator Cohen.

PRIORITIES

Senator COHEN. Mr. Stello, according to the answers to the questions that were propounded to you, you place facility safety and environmental compliance as your number one priority; you place weapons safety as number two; and you would give the lowest priority to maintenance and improvement of the nuclear weapons stockpile. Is that correct?

Mr. STELLO. Yes. If I may have a moment to——

Senator COHEN. Questions 8 and 11.

Mr. STELLO. Yes. I am trying to find them.

Senator COHEN. The clock is running on this side. [Laughter.]

Mr. STELLO. Yes. The assurance of public health and safety, safety and environmental compliance, I believe, and let me explain my thinking.

Senator COHEN. Before you explain it, when you say environmental compliance, does that mean that waste cleanup is the equivalent of environmental compliance? You put waste cleanup in category number one?

Mr. STELLO. No.

Senator COHEN. You do not?

Mr. STELLO. No. That, to me, is a separate activity. What I mean is complying with the environmental requirements for each of those facilities today. Each of these facilities is generating waste, and they have other problems associated with cleanup. That is a different activity that will be assigned to another organizational component.

The reason that I put first with respect to the facility public health and safety and environmental compliance is I look at many of these facilities in terms of an incident creating the very largest single problem with respect to environmental consequences. An accident at one of the facilities can have very, very large consequences. Weapons safety, a problem in handling a weapon and getting plutonium scatter clearly is another issue that I worry about.

Senator **Cohen**. May I ask you here when you say weapons safety, does that mean newer, safer warheads, for example?

Mr. **Stello**. Yes. I include that in it.

Senator **Cohen**. So in other words, you could have modernized nuclear weapons falling into category number two of weapons safety in terms of your priorities?

Mr. **Stello**. That is correct. There is more to it than that. That is dealing with the weapons that we now have and assuring all of those weapons are being handled every day safely.

Senator **Cohen**. So you would draw the distinction then between weapons safety and improvements in nuclear stockpile? In other words, you have the three categories. You have facility safety——

Mr. **Stello**. Well, I think there is where it becomes very difficult to make—there could be a weapons safety problem that also could be corrected by a requirement for a new weapons system to replace an old weapons system that would both satisfy B and D.

Senator **Cohen**. I am just trying to find out in terms of priority if you have a situation where you look at weapons safety and say we need a newer, safer warhead design, how do you distinguish that between improving nuclear weapons stockpile? In other words, number two is weapons safety. Number three is the maintenance and improvement of the nuclear weapons stockpile. Are they interchangeable?

Mr. **Stello**. At that point, I think they are almost one in the same. In other words, our national security requirements might dictate a new weapons system, for example. In doing that, that weapons system may replace a weapon where you could get significant improvement in safety in replacing that particular weapon. So then B and D are synonymous. They are one in the same. They accomplish the same purpose.

Senator **Cohen**. As I read your answer in number 11, you indicate that modernization of the weapons complex is the lowest priority. I guess the question I have is what weapons programs would you sacrifice first in order to pay for the facility safety and environmental compliance?

Mr. **Stello**. If I do not achieve facility safety, I will not be able to do any of the others.

Senator **Cohen**. No, but I am talking about getting the money out, for example. Which programs would you sacrifice in order to pay for facility safety upgrades that need to be done and the environmental compliance which has to be done within your budget constraints? Would you sacrifice the modernization of particular weapons systems?

Mr. **Stello**. Let me give you a specific example and see if I am answering your question. Today the safety of the Savannah River reactors, and the safe startup, in my view, is the highest priority task we have, and it is driven by safety.

Senator **Cohen**. Right.

Mr. **Stello**. We need to make sure there are sufficient funds to accomplish that purpose. If it means that you have to defer some of the other programs of the Department and scale them down, extend them down, lengthen them to achieve that, clearly modernization would be one of them that I would do to get the money to accomplish the A.

Senator COHEN. You have not looked or made any kind of a survey for those potentials?

Mr. STELLO. No, sir. My point was to answer this as the kind of thinking that I would use in making those judgments. They are not hard and fast rules. No rules can be. I clearly need to do all of those.

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Senator COHEN. I have another question concerning your answer to question number 9 which pertains to the Defense Nuclear Facilities Safety Board that was created last year. I was unclear in terms of how you view the role of that Board. I gather from your answer that you see it as something in the nature of a consultative group, and I think you used the word that requesting review by the Board on issues should become routine. Do you see it really as something that is consultative in nature, or is it something much broader than that that has its own independent investigatory powers separate and apart from the Department itself?

Mr. STELLO. Oh, no. They clearly have complete independence to reach in and review whatever they wish. I say I think it is a failing. If they have concluded something really needed to be reviewed and I, if I were confirmed as Assistant Secretary, would not have asked them to look at this because it is indeed a problem and made them aware of a problem, if they literally have to dig around and find their problems because I am not doing my job, I think I have failed. I think I ought to be bringing the problems and telling them these problems exist rather than the other way around.

Senator COHEN. Well, if we use that in terms of all of our IGs, I suppose that would have a massive amount of resignation from all of our agencies.

Mr. STELLO. Sometimes these outside boards do, in fact, come across items which will not be high on your computer screen as such in terms of priorities. Sometimes they do find things that need attention that you have not addressed yourself to without any reflection upon you.

Senator COHEN. What you are saying is if they have to request it and you have not looked at it, you have failed?

Mr. STELLO. Yes. I think if they are finding serious problems in safety at these facilities and they are being relied on, if you are relying on them to do that, then I think, yes, I think the Assistant Secretary has failed. Now I do not mean for a moment to suggest that there is any lack of authority on their behalf to look at anything they wish to whenever they wish, and I added that I think that the information necessary to help them make that judgment, those information systems need to be developed so they can do that.

Senator COHEN. The point is that if they were to independently request information from you that you had not thought to have them look into, you would see their role as such——

Mr. STELLO. No, not just requesting information. I would think they ought to have it, whatever they would need.

Senator **Cohen**. I am just trying to clarify what you are saying. What you are saying is that if they are in a position where they are requesting information dealing with an issue that you have not looked at, that you have failed in the sense that here you have a group over your shoulder that is requesting information on something that you have not fully looked at, you would think that that would be a failure on your part? You should be at least on top of all the issues that ought to be of concern to them, is that what you are saying?

Mr. **Stello**. Yes, but more specifically, not requesting them would not make me think of a failure, but if they requested the information and they looked at it and they found a big safety problem and they found the safety problem rather than my having found the safety problem, it would be very upsetting to me and I would look at that as failure, that I am not getting the job done. I think that really is the Assistant Secretary's job, and he ought to be on top of getting it done.

Senator **Exon**. Thank you, Senator Cohen. Senator Glenn.

Senator **Glenn**. Thank you, Mr. Chairman. I agree. We all wish we lived in a perfect world where every Department ran perfectly and we did not need IGs at all, but what we found is the IGs basically have been very, very valuable in most of these things.

We had a hearing a short time ago where we had six IGs in over a 2-day period, and the stuff that they have turned up in some of the agencies is just mind-boggling, and I do not have any doubt that putting new management in over at the DOE is not going to solve all the problems immediately. We are going to have plenty of use for an IG, as Senator Cohen was indicating.

Senator **Cohen**. If the Senator would yield, I was not suggesting that the Safety Board was the equivalent of an IG.

Senator **Glenn**. No.

Senator **Cohen**. I was only trying to convey to Mr. Stello that he may find that there are a number of safety issues which for a variety of reasons he may not address. That does not necessarily mean that he has been either negligent or derelict in his duty in ferreting those out.

Senator **Glenn**. Mr. Chairman, I indicated this morning the areas I wanted to get into. Some of these have been covered here. Mr. Stello, you indicated that you are an aggressive person and I am told that—I have not had a chance to go through the book yet here. I just got it last night, as I indicated this morning.

ALLEGATIONS AGAINST MR. STELLO

In April 1987 we heard testimony from Ben Hayes. In late 1985 the Office of Investigations (OI) Director Ben Hayes separately briefed Chairman Palladino and Commissioner Zech about OI's ongoing investigation of TVA. Since it was established by the Commission in 1982, OI has been responsible for conducting all investigations of alleged wrong-doing by the NRC licensees and vendors.

Mr. Hayes suggested that the NRC's handling of TVA matters appeared to be disorganized and the NRC had no comprehensive program to identify problems or resolve those programs. Mr. Hayes recommended the Commission appoint a senior executive to take over responsibility for the TVA project and provide that person with the necessary resources.

Now, I would read out of our hearing of Governmental Affairs back at that time, and this was sworn testimony that Mr. Hayes gave and he said, "I subsequently drove to a management meeting at the NRC Region 1 office in King of Prussia, Pennsylvania. The next morning the management meeting commenced under the leadership of then EDO Mr. William Dircks." Mr. Dircks shortly retired not too long after this and you became the new Executive Director for Operations, I believe. I'll continue Mr. Hayes' testimony: "That morning, Mr. Stello came up to me and standing face to face and shaking his fist in my face said, 'Ben, if what you said comes to pass, I'm going to get you.' At first I though Mr. Stello was kidding and I responded in a jovial tone, 'What are you doing, Vic, threatening me?' Mr. Stello's reply was, 'I don't care how long it takes, I'm going to get you.' " Then he says, "I believe Mr. Stello was dead serious." Now, that is carrying an aggressive nature a little bit too far. What are your comments on that?

Mr. STELLO. If the way he describes it is what was in my heart, you are right.

Senator GLENN. What was in your heart, did you say?

Mr. STELLO. My heart. If that is what I was really trying to do. It has been some years since then. I know of nothing that would suggest that I have "been out to get Mr. Hayes." I have confronted him with that and said, do you really, seriously, really believe that? I think, even maybe today, he still does. It is the way he reacted to it. It is not my nature to go after people and "get them." I have never done that, nor do I condone it, nor would I permit it.

My view of that conversation, I explained to you at the hearing, I am aggressive. I am also Italian and I tend to talk and wave my hands a lot. Maybe he construed something differently with the shaking of the fist. I just cannot believe that he really sincerely thought that it was a threat to him.

But a number of years have gone by. Nothing has happened, and our relationship—we still get along very well, so—but I have asked him. I still think he harbors that view. I apologize for it, but there is not much I can do about it. No, I think you are right. I completely concur that if that was my design or intent that would be highly improper.

Senator GLENN. Let me follow up with another question. In August of this year the Governmental Affairs Committee issued a report entitled "Serious Problems Continue in the NRC's Internal Investigations." The report concluded that "Mr. Stello violated Inspector General principles by involving his office to an inappropriate degree in the conduct of the IG's investigation of Roger Fortuna. Mr. Stello involved himself by approving the consultant contract for Ellison and assigning James Blaha to assist the IG in getting information from Ellison. Blaha was then on detail to another NRC office, but was scheduled to become an assistant to Stello. Stello asked Blaha to set up Ellison's consultant contract, handle the cash payments to Ellison, review the technical or safety issues raised by Ellison, and procure administrative support for the IG. Blaha was sent to Florida to interview Ellison before the consultant contract was executed. It was Blaha, not the IG, who drafted the memo to Stello justifying the use of the consultant contract. Moreover, Blaha was present almost all the time Ellison was being interviewed in the motel room during his 2-week stay in Virginia, and through Blaha then Stello had a direct participant in the IG investigation of Fortuna."

What do you have to say about this? Why was all this done? It is very unusual.

Mr. STELLO. Well, I appreciate the opportunity to respond to that. I recall that hearing very well, and there most recently was another in the House.

Senator GLENN. I should point out that Fortuna was Mr. Hayes' deputy, is that not correct?

Mr. STELLO. That is correct, he is. Let me say that the characterization, or the impression I have from the conclusion of your committee report is that I should not have conducted the investigation, should not have gone forward with it. The result of the committee on the House side, however, left me with the distinct impression, out of the questioning in that hearing, that I did not go fast enough.

Now, the charges that I was after—the issues that I was after, Senator Glenn—and we need to set the record very straight—was cleared up. My job is safety. I issued the contract because I became persuaded that there were safety issues that needed to be pursued. The kinds of safety issues that were being raised were issues related to people at Nine Mile Point using drugs, that there was fire in the drywell that was unreported, in gundecking of records, that there were instruments that were not being calibrated properly. I believe those are very important safety issues and I would be negligent to not pursue them.

The information I had about Mr. Ellison was information that he had come to this agency once before and the specific information he provided turned out to be correct and, in fact, led to a fine some years previous to this.

Since your committee looked at that, we at the NRC have pursued the allegations that were raised by Mr. Ellison and I think there is a report I will be happy to provide for the record, which shows that those particular allegations that he raised essentially were substantiated. That is, that there were people that were using drugs. They were confirmed, tested positive. That not only was there one fire in the drywell, but there were three fires that were in the drywell.

[Information referred to follows:]

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406

Enclosure 1

Docket No. 50-220

18 JUL 1989

Niagara Mohawk Power Corporation
ATTN: Mr. Lawrence Burkhardt, III
Executive Vice President - Nuclear
301 Plainfield Road
Syracuse, New York 13212

Gentlemen:

Subject: Inspection Report No. 50-220/89-16

This letter transmits the results of the Special Team Inspection (STI) led by Mr. Glenn Meyer of this office from May 22, 1989, to May 26, 1989, at Nine Mile Point Unit 1, Scriba, New York. A summary of the findings was presented to Mr. Kim Dahlberg and other members of your staff at the conclusion of the inspection.

The team evaluated additional allegations by a former Unit 1 technician concerning problems during 1986. Our review noted that Niagara Mohawk Power Corporation (NMPC) was previously made aware of some of these issues. The team conducted an independent site inspection and concluded that specific facts in the allegations were in part substantiated and with one exception did not constitute violations of NRC requirements. One non-cited violation was identified regarding the lack of proper administrative paperwork to document pressure switch calibrations performed on August 9, 1985. The NRC also concludes that weaknesses in work control associated with HPCI switch calibration and welding in the drywell are additional examples of the failure of NMPC in 1986 to aggressively identify and correct problems. These additional examples would not have changed the enforcement action taken based upon Inspection Report 50-220/86-17.

The NRC is also concerned that the NMPC Fitness for Duty Program, implemented pursuant to the NRC's policy statement, has not been effective in detecting or deterring illegal drug use. The team found that three of six individuals alleged to have used illegal drugs in 1986 subsequently tested positive during NMPC's 1988 investigation, substantiating in part the allegation that illegal drugs were likely used and that NMPC's Fitness for Duty Program in effect at the time did not detect their use. The team concluded that NMPC's investigations in 1988 of illegal drug use by NMPC personnel and the resultant actions appeared consistent with the NMPC Fitness for Duty Program as revised in April 1987. The Fitness for Duty Program is currently being upgraded to meet NRC's new rules on Fitness for Duty (10 CFR Part 26) and will be the subject of subsequent inspections.

We appreciate your cooperation. No reply to this letter is required.

Sincerely,

Samuel J. Collins, Deputy Director
Division of Reactor Projects

Enclosure: NRC Region I Inspection Report No. 50-220/89-16

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U.S. NUCLEAR REGULATORY COMMISSION

REGION I

Report No. 50-220/89-16

License No. DPR-63

Licensee: Niagara Mohawk Power Corporation
301 Plainfield Road
Syracuse, New York 13212

Facility: Nine Mile Point Unit 1

Location: Scriba, New York

Dates: May 22 - 26, 1989

Inspectors: Charles Marschall, Senior Resident Inspector, Ginna
Wayne Schmidt, Senior Resident Inspector, FitzPatrick
Robert Temps, Resident Inspector
Maitri Banerjee, Project Engineer

Team Leader: Glenn W. Meyer
Glenn W. Meyer
Senior Resident Inspector, Hope Creek
7-17-89
Date

Approved by:
Edward C. Wenzinger, Chief
Projects Branch No. 2, DRP
7/17/89
Date

INSPECTION SUMMARY

Areas Inspected: An announced Special Team Inspection reviewed additional allegations from a former Unit 1 I&C technician concerning the reliability of HPCI pumps, a 1986 drywell fire, 1986 Monthly Operating Reports, and 1986 illegal drug use. The inspection involved 124 hours.

Results: The team concluded that while specific facts in the allegations on HPCI, a drywell fire, and Monthly Operating Reports were in part substantiated, those facts did not constitute violations of NRC requirements. The team concluded that NMPC investigations of illegal drug use by NMPC personnel and the resultant actions appeared consistent with the NMPC revised Fitness for Duty Program. One non-cited violation was identified regarding the lack of proper administrative paperwork to document pressure switch calibrations performed on August 19, 1985. An Executive Summary is provided as Section 1.

1. EXECUTIVE SUMMARY

Background:

Allegations were made to NRC personnel in 1988 by an individual previously employed as an I&C technician at Nine Mile Point Unit 1. These allegations were in addition to numerous concerns expressed by the same individual in 1986 that were the subject of a 1986 NRC special team inspection documented in Inspection Report 50-220/86-17. Additionally, the alleger had previously discussed some of the new allegations directly with Niagara Mohawk Power Corporation (NMPC) investigators in 1988.

Review of Allegations:

A concern was expressed about the calibration of oil pressure switches on HPCI pumps and the resultant unreliability of the HPCI pumps to properly start. The team concluded that the allegation of HPCI unreliability was unsubstantiated based primarily on the numerous examples of acceptable HPCI initiations. Further, a current I&C technician who had originally raised the concern was interviewed and stated that his concern had been acceptably resolved by NMPC; the team independently reviewed and agreed with the NMPC resolution. The team noted during its review that a Work Request covering the questioned calibration in August 1985 was lacking and concluded that this represented a non-cited violation of NRC requirements.

A concern was expressed that a fire occurred in the drywell in April 1986, which was not reported to the NRC. The team concluded that although three fires occurred during the referenced period, they were not reported because there was no NRC requirement to report them. The fires did not affect safety-related equipment and were extinguished within ten minutes, the limit in NMPC emergency planning procedures after which an Unusual Event must be declared and reported. Accordingly, the allegation that an April 1986 drywell fire should have been reported was unsubstantiated. This allegation had also been brought to NMPC by the alleger in July 1988.

A concern was expressed that Monthly Operating Reports for the period of April 1986 to July 1986 were inaccurate in that they did not report some Local Power Range Monitor (LPRM) maintenance. The team concluded that there was no regulatory requirement to provide such information and that information regarding procedure violations during LPRM maintenance was already known to NRC inspectors, and thus the omitted information did not represent a safety concern. Regarding the intentional omission of the information from the monthly report, the team did not substantiate this allegation. Therefore, the allegation that LPRM maintenance was intentionally omitted from Monthly Operating Reports because NMPC knew the LPRM work was in violation of procedures was unsubstantiated.

A concern was expressed regarding illegal drug use in 1986. In response to this issue, the NRC turned over to NMPC management the specific information on six individuals who had allegedly used drugs and two individuals who had allegedly been aware of drug use. The licensee had previously conducted an investigation in this area as a result of an anonymous allegation received in 1988. The team reviewed the 1988 NMPC investigation, which had covered five of the six individuals alleged to be using drugs. Four individuals had previously taken drug tests; three had tested positive and one of these three had been fired for drug possession. Of the two individuals alleged to be aware of drug use, one denied any such knowledge and the other died in 1985. The results of the NMPC investigation substantiated, in part, the concern that drugs were likely used and that the Fitness for Duty Program in effect at that time did not detect their use. The concern regarding NMPC not carrying out their drug testing program due to lack of random or periodic drug tests was based on the false premise that such testing was required. In fact, NMPC did not have such a program in place at that time and was not required to do such testing. The team concluded that the NMPC investigation and the personnel actions resulting from it appeared consistent with the revised (April 1987) NMPC Fitness for Duty Program. The team noted that the NMPC Fitness for Duty Program, revised in April 1987, is currently being upgraded to meet the newly imposed requirements of 10 CFR Part 26.

Conclusions:

The team concluded that while specific facts in the allegation on HPCI, a drywell fire, and Monthly Operating Reports were in part substantiated, and with one exception did not constitute violations of NRC requirements. The NRC concludes that weaknesses in work control associated with HPCI switch calibration and welding in the drywell are additional examples of the failure of NMPC in 1986 to aggressively identify and correct problems.

The NRC is concerned that the NMPC Fitness for Duty Program, implemented pursuant to the NRC's policy statement, has not been effective in detecting or determining illegal drug use. The team found that three of six individuals alleged to have used illegal drugs in 1986 subsequently tested positive during NMPC's 1988 investigation, substantiating in part the allegation that illegal drugs were likely used and that NMPC's Fitness for Duty Program in effect at the time did not detect their use. The team concluded that NMPC's investigations in 1988 of illegal drug use by NMPC personnel and the resultant actions appeared consistent with the NMPC Fitness for Duty Program as revised in April 1987. The Fitness for Duty Program is currently being upgraded to meet NRC's new rule on Fitness for Duty (10 CFR Part 26) and will be the subject of subsequent inspections.

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2. BACKGROUND

On July 11, 1986, an instrument & controls (I&C) technician ("the alleger") at Nine Mile Point Unit 1 (NMP-1) approached the NRC resident inspector with numerous allegations. On July 15, 1986, the alleger related the allegations directly to Niagara Mohawk Power Corporation (NMPC) management and subsequently provided transcribed testimony to NRC Region I on the allegations on July 22, 1986.

The allegations were reviewed during a special team inspection during August 25-29, 1986, which documented the events prior to the inspection and its findings in Inspection Report 50-220/86-17; 50-410/86-61. That team concluded that "most of the allegations were factually correct, however their safety implications were subsequently determined to be minor." The findings of the special team inspection were included in the basis for a $50,000 Civil Penalty issued on April 27, 1987.

Subsequently, in conversations with NRC personnel in 1988, the alleger, who no longer works at NMP-1, presented additional allegations based on his review of records and recalled conversations with fellow workers at the Nine Mile Point facility. The allegations were transmitted to Region I on April 25, 1989 and a Special Team Inspection (STI) was planned to address the concerns. On May 16, 1989, the STI team leader reviewed NRC records of the 1988 discussions and reviewed the specific allegations with the applicable NRC personnel to better understand the issues and to confirm that no additional technical concerns existed. These issues subsequently formed the scope of the reviews conducted by this Special Team Inspection.

In addition to the NRC efforts, the alleger had contacted NMPC in 1988 regarding safety concerns. An NMPC Security Department investigator traveled to Florida in July 1988 to discuss these concerns with the alleger and to review taped conversations the alleger possessed. At this point NMPC became aware of some of the four additional allegations, which were expressed to the NRC later in 1988, and subsequently evaluated them to determine whether there was any adverse safety impact.

3. REVIEW OF ALLEGATIONS

All of the additional allegations involve issues at Nine Mile Point Unit 1. The team's review of these allegations is documented below, including the allegation, the NMPC evaluation (if applicable), the NRC STI review and findings, and a conclusion for each allegation.

3.1 HPCI Pump Switch Calibration

Allegation:

The High Pressure Coolant Injection (HPCI) pump oil switches are not adequately calibrated for cold starting conditions; therefore, the pumps cannot be relied upon to start during an emergency.

During the June-July 1986 startup, the second HPCI pump failed to start on several occasions, and the reactor had to be scrammed. The I&C supervisor ordered an I&C technician to go down and quickly recalibrate the HPCI pump oil switch without using a procedure, so the reactor could be restarted.

This problem still remains and recommendations to fix the problem have been ignored.

NMPC Evaluation:

NMPC was not aware of this allegation, although a related issue was identified and resolved by NMPC.

Review and Findings:

At NMP-1 there is not a separate HPCI system as exists at later designs of boiling water reactors, the HPCI represents a mode of operation of the two motor-driven feedwater pumps, one of which is normally operating to provide feedwater. The third feedwater pump with the largest capacity is powered off of the turbine-generator shaft.

The inspector interviewed an I&C technician (identified by the alleger) who originally had identified the HPCI pump lube oil switch concern. The technician was unaware of any HPCI problems in June-July 1986. His concern stemmed from an August 19, 1985 trip of the No. 11 Reactor Feedwater Pump (RFP) from low lube oil pressure following a HPCI initiation signal after a reactor scram. After the RFP trip, he was instructed to calibrate two lube oil switches, the HPCI auxiliary oil pump switch (63Q-1) and the HPCI feedwater pump start permissive switch (63Q-2). (The auxiliary oil pump switch protects the oil pump from damaging itself, while the feedwater pump permissive switch prevents the feedwater pump from starting and running unless there is sufficient oil pressure to properly lubricate the feedwater pump.) He found the setpoints within tolerance for the auxiliary oil pump switch (63Q-1) but out of tolerance for the feedwater pump start permissive switch (63Q-2). He adjusted the setpoints for 63Q-2 and tightened a loose terminal screw on a switch terminal block. The calibrations were documented on an Instrument Calibration Report; however, at that time a procedure for this calibration did not exist since the calibration was considered within the skills of a journeyman technician.

The technician stated that he subsequently talked with the I&C supervisor concerning whether it was acceptable to calibrate the switches when the lube oil was hot (normal operating temperature) and whether a previous hot calibration might have caused the out-of-calibration setpoints. The supervisor explained that it was preferable for the lube oil to be cold during the switch calibration, but that oil temperature would not affect the acceptability of the calibration. Further, the feedwater pump ran less than fifteen seconds before it tripped; therefore, the increase in lube oil temperature was insignificant. At the conclusion of that discussion, the I&C technician was satisfied that his concern had been properly addressed.

The inspector evaluated whether the calibration temperature could have affected the operability of the Mercoid pressure switch. The switch utilizes a coiled tube which deflects in response to pressure. This switch type responds properly to various fluids, e.g., oil, water, air, etc., and the temperature has a negligible effect on the tube's response. Further, the temperature range that the switch would have experienced (60 deg F to 160 deg F) was within the acceptable range for the switch. Accordingly, the inspector concluded that the I&C supervisor's previous explanation that calibration temperature would not have affected the operability of the pressure switch had been technically correct.

The inspector reviewed Licensee Event Report (LER) 85-14, the post-trip review of the August 19, 1985 reactor scram, and the applicable Instrument Calibration Reports and found them to be consistent with the above. LER 85-14 states that the No. 11 RFP "tripped on low oil pressure due to either a loose wire on the oil pressure switch or the switch being out-of-calibration".

The inspector reviewed all LERs from 1985 and 1986 and found that there were no failures of either HPCI feedwater pump in 1986 and that there were two other HPCI failures in 1985, unrelated to oil switches. Specifically, on November 1, 1985, No. 12 RFP started on a HPCI initiation signal, then was manually tripped by operators due to failure of No. 12 Flow Control Valve. When operators subsequently attempted to restart No. 12 RFP, it would not start due to failure of a timer associated with the HPCI start permissive. There were no occurrences of HPCI feedwater pump failures in June-July 1986. The inspector reviewed the control room logs from June and July 1986 and found no HPCI failures.

Numerous successful HPCI feedwater pump starts from cold conditions occurred in 1985 and 1986, including August 12, 1985, March 8, 1986, June 15, 1986, twice on June 18, 1986, and August 3, 1986. A records review of both motor-driven feedwater pumps from 1985 to the present indicated that no lube oil switches have been replaced and when recalibrated, the switches were found to be within proper tolerances.

The inspector noted that administrative procedures in 1985 required the use of a Work Request to control maintenance activities. Neither the inspector nor NMPC could find any record of a Work Request issued to administratively control the August 19, 1985 switch calibrations. This instance of a lack of a Work Request represented a violation of administrative procedures. Based on the minimal safety significance and the intervening time period, this violation is not being cited in accordance with the criteria specified in Section V.G. of the NRC Enforcement Policy. (NCV 50-220/89-16-01)

The inspector concluded that the 1985 calibrations performed without a specific calibration procedure had been acceptable, in that it was within the skills of a journeyman technician. The inspector noted that NMPC currently has procedure N1-ICP-R-029-002, Feedwater Pump #11 Instrument Calibration of RFW Pump Oil Pressure Instrumentation, to calibrate the

HPCI pump lube oil switches. The inspector found that both the 1985 calibration method (hand operated pump) and the current method (bottled gas) are acceptable and would not be affected by changes in lube oil temperature.

Conclusions:

The team concluded that the allegation was unsubstantiated, in that there were no HPCI problems in June or July 1986. The team found that an issue had been raised by an I&C technician concerning the calibration of HPCI oil switches on August 19, 1985. The technician's concern was subsequently resolved, the switches function properly regardless of the calibration temperature, and the HPCI pumps have repeatedly demonstrated the ability to start when cold. The team concluded that the failure to use a Work Request to control the August 1985 calibrations represented a non-cited violation.

3.2 Drywell Fire

Allegation:

There was a fire in the drywell on or about April 27, 1986, that should have been reported to the NRC but was not. The fire was witnessed by another I&C technician and was documented in the I&C log. The fire involved welding in the drywell and was not immediately extinguished, because neither a fire watch nor a fire extinguisher were at the welding location.

NMPC Evaluation:

In July 1988 the alleger informed an NMPC investigator of his concern regarding an April 27, 1986 fire in the drywell. Based on this information, the Security Department requested that the NMPC Fire Department investigate any possible fires in the drywell during the 1986 outage. The results of that review were documented in an internal memo dated August 5, 1988, from the Unit 1 fire protection supervisor to the NMPC investigator. NMPC determined that there had been the following three fires in the drywell during the 1986 outage.

- April 17 - Smoke and burning rags were found in the drywell and extinguished.
- April 26 - Weld slag dropped between the reactor vessel and the shield wall and ignited gloves, protective clothing and rags. This fire was extinguished by NMPC Fire Department personnel.
- April 27 - Weld slag dropped onto insulation and nylon strapping, which caught on fire and was extinguished by NMPC Fire Department personnel.

NMPC evaluation of these fires concluded that they were not reportable since they did not exceed the ten minute duration specified in emergency planning procedures that would have required the declaration of an Unusual Event and the resultant reporting to the NRC.

NMPC Security had subsequently informed the Nine Mile Point resident inspectors of this allegation after they had talked to the alleger. (A team member who was a resident inspector at Nine Mile Point in 1988 recalled being informed that NMPC Security was reviewing this allegation.)

Review and Findings:

The inspector interviewed the I&C technician (identified by the alleger) who completed the I&C log entry which documented the April 27 "Time out due to drywell fire". The technician said that he was outside the drywell when a contractor came out looking for an extinguisher. The technician notified the control room and within several minutes personnel responded to the event.

The inspector reviewed the NMPC investigation, which concluded that the three fires were properly handled in accordance with Fire Department Procedure 4 and Emergency Planning Procedure 2, which specifies that fires that exceed ten minutes be declared as Unusual Events. At the time of the fires the unit was in cold shutdown. Further, no safety-related equipment was involved in any of the fires. The inspector verified that each fire was documented in Senior Shift Supervisor (SSS)/Chief Shift Operator (CSO) and Fire Department logs and that no fire was documented as having exceeded the ten minute limit. Neither NMPC nor NRC identified any record of a formal NRC notification or report. However, the inspector could not identify any NRC or NMPC requirement that formal notification or reporting to the NRC should have occurred for the above fires. Also, the inspector judged that the technical significance of the fires was minimal based on the lack of any safety-related equipment being involved.

The inspector found that contractors generally provide their own fire watches. In the case of the April 27 fire, it appeared that the fire watch in the drywell had to leave the drywell to obtain a fire extinguisher or that the weld slag had dropped down beyond the view of the fire watch. The inspector concluded, based upon the I&C technican's statements, that a fire extinguisher was not available as required by NMPC administrative procedures regarding fire watches. However, this procedure violation by itself was not reportable to NRC. In a discussion with the inspector, the SSS who had been on duty noted that he had discussed this issue with the Fire Department and contractor personnel and stressed the need for better control over welding operations.

Conclusions:

The team concluded that there were fires in the drywell in April 1986. The team concluded that the fact that the fires were not reported is also true, however, there is no regulatory requirement that required such a report in these instances. The team concluded that the safety significance of the drywell fires was minimal in that no safety related equipment was involved and the fires were promptly put out. Accordingly, the team concluded the allegation that an April 1986 drywell fire should have been reported to the NRC was unsubstantiated. However, the staff concludes that three fires in ten days in the drywell indicates a need for better attention to detail and formality in control of work which has the potential to cause fires. The SSS informal discussion with the Fire Department and contractor personnel to better control welding appears to have been effective in this instance.

3.3 Monthly Operating Report

Allegation:

Monthly Operating Reports sent to NRC for Nine Mile Point Unit 1 have been inaccurate in that NMPC intentionally omitted Local Power Range Monitor (LPRM) connector maintenance from the NMP-1 Monthly Operating Reports for April 1986 through July 1986 because NMPC knew that the LPRM work was in violation of procedures.

NMPC Evaluation:

NMPC was not aware of this allegation.

Review and Findings:

To establish the facts associated with the allegation, the inspector reviewed a listing of work requests generated by the work tracking system and the Monthly Operating Reports for the subject period. The listing showed that 18 work requests had involved LPRM connectors; 9 were classified as safety-related and 9 were classified as nonsafety-related. One of the two work requests completed in May was included in the monthly report, and two of the seven work requests completed in July were included in the monthly report. The inspector noted that the July report was issued on August 1, 1986, which was after the time when the alleger's LPRM connector concerns were generally known to NMPC management and NRC (the alleger had detailed his concerns on July 15, 1986 and July 22, 1986, respectively). Accordingly, there appeared to be no incentive to omit LPRM work requests at that point. None of the nonsafety-related LPRM work requests were included in the monthly reports.

In discussions with the inspector the I&C supervisor during this period stated that the list of completed safety-related work requests included in the monthly reports was prepared by the clerical staff in the maintenance organization from the data base information available in the computer. The supervisor noted that nonsafety-related work requests were not listed in the monthly reports and that some LPRM connectors had been classified as nonsafety-related. The staff member who prepared the subject monthly reports was questioned but could not recall why certain completed maintenance work was not listed. The inspector concluded that the work requests listed 5rin monthly reports were determined by clerical personnel with little supervisory guidance or review and that the omissions were most likely unintentional oversights. The inspector concluded that there was no evidence to suggest that NMPC intentionally omitted the work requests.

The inspector reviewed NMP-1 Technical Specification 6.9.1.c., which specifies that "operating statistics and shutdown experience" be reported monthly, and noted that it does not specifically mention maintenance. The inspector could not identify any regulatory requirement or NMPC commitment which necessitated monthly reporting of completed maintenance work. Further, the inspector concluded that the listing of work requests currently included in the monthly reports served little purpose as the full records of completed maintenance are routinely available to NRC inspectors.

In discussions with the inspector, NMPC personnel were uncertain why maintenance records have been included in the monthly reports. Based on the negligible benefit and the lack of any requirement to report completed maintenance, NMPC stated that it would evaluate discontinuing this listing in future monthly reports.

The allegation that LPRM connector work during this period was performed in violation of procedures was previously substantiated in Inspection Report 50-220/86-17.

Conclusions:

Although the team concluded that certain completed 1986 LPRM maintenance work was not reported in the Monthly Operating Reports, the team did not identify any regulatory requirement or NMPC commitment for such monthly maintenance reporting. The team concluded because NRC had knowledge of the improper LPRM work before the July 1986 monthly report was submitted that the work requests missing from the monthly report did not represent a safety concern and that the alleged intentional omission could not be substantiated.

3.4 Illegal Drug Use

Background on Allegations:

The alleger provided specific information on eight individuals (labeled A through H in this report) and two general statements regarding alleged illegal drug usage. The alleger also claimed that the NMPC drug testing program had not been properly implemented based upon his knowledge that he and others were never tested. Due to the nature of the allegations, the issues were provided to NMPC and the team's inspection largely consisted of a review of the NMPC investigations.

The team determined that based on an anonymous allegation received in April 1988, the NMPC Security Department had previously investigated illegal drug use by Unit 2 I&C technicians (some of which worked at Unit 1), including extended visual surveillance and the use of drug sensitive dogs. During this investigation, several people were questioned and were requested to submit to drug testing. Three individuals (Mr. A, Mr. E and Mr. G) tested positive for the presence of cannabinoids (which indicates use of marijuana). NMPC reviewed the work performed by these three individuals and concluded that it had been acceptable. Additionally, Mr. G was apprehended in the parking lot with marijuana in his vehicle and was subsequently fired. Site access for Mr. A and Mr. E was initially revoked, until they enrolled in NMPC's employee assistance program (EAP). This program allows the employees to return to work following counseling and negative results from subsequent drug testing. After returning to work, these individuals are subjected to random drug testing at intervals not to exceed three months for a period of two years. Also, Mr. F was interviewed due to his association with Mr. G, but no conclusive findings resulted.

On May 12, 1988, the alleger again contacted NMPC regarding a tape recording of discussions between Mr. D and the alleger, in which use of drugs by Mr. D, Mr. F, and Mr. G at a party at Mr. G's house in 1986 was discussed. Subsequently, in July 1988 NMPC obtained a copy of the tape. At that time Mr. G had been fired and Mr. F had been interviewed. NMPC decided not to interview Mr. D based on the two year old information provided.

Additional NMPC evaluations occurred during the inspection, including security investigator interviews of Mr. B, Mr. C, and Mr. D.

The allegations received by the NRC are discussed separately below, and an overall conclusion is presented at the end of the section.

Background on NMPC Fitness for Duty Program:

The NMPC Fitness for Duty Program in effect in 1986, the period of the alleged drug activities, was revised on April 1, 1987 to the current program. This program is attached, including a comparison of drug testing under the previous program and the current program. It should be noted that the proposed new annual drug testing for "all employees at the nuclear site, who are required to have physical examinations" was never implemented due to legal challenges. Although there were no NRC requirements for fitness for duty programs, the revised program was reviewed by the NRC staff in July 1987 as part of the issuance of the full power license for Nine Mile Point Unit 2 and was found to be adequate.

The NMPC Fitness for Duty Program was under revision during the inspection due to recently issued NRC regulations. Specifically, on April 27, 1989, the NRC approved 10 CFR Part 26, Fitness for Duty Programs, to be effective on July 7, 1989. The new regulations include random, unannounced drug testing requirements, for which licensee programs are to be implemented within 180 days. Accordingly, NMPC was proceeding with the contracts and union negotiations necessary to meet the new requirements.

3.4.1 Allegation:

Drugs were used by I&C technicians A and B at a party at Mr. A's home during March or April of 1986. Mr. C, a supervisor, saw Mr. A and B smoking marijuana, but did not say anything.

NMPC Evaluation:

NMPC was not aware of this allegation. However, Mr. A had been investigated in 1988. At that time he had a positive test for drugs and enrolled in the NMPC EAP.

Mr. B was interviewed by NMPC Security on May 24, 1989 in relation to this allegation. Mr. B denied any knowledge of this event and denied ever having used marijuana. Additionally, Mr. B had been subjected to a pre-promotion drug test in January 1989 and the results were acceptable.

NMPC discussed this allegation with Mr. C on May 25, 1989. Mr. C recalled an incident in which he and the alleger were at Mr. A's house one morning after work; however, he stated that he never saw any individuals using drugs nor was he aware of any drug use by I&C technicians (see allegation 3.4.6 below). NMPC Security noted that Mr. C had been a very credible witness during previous investigations.

Facts Established by Team:

Mr. A had a positive drug test in 1988, and Mr. B had a negative drug test in January 1989.

3.4.2 Allegation:

After a long, offsite lunch break in March or April 1985, the alleger observed Mr. D and E to be glassy eyed, and Mr. D told the alleger they had smoked dope.

NMPC Evaluation:

NMPC was not aware of this allegation.

NMPC Security questioned Mr. D on May 25, 1989. Mr. D denied ever having used marijuana during lunch breaks and stated that he no longer used marijuana, although he admitted to using it while he was in college in the late 1970s.

During the drug investigation performed in April 1988, Mr. E had a positive test for drugs, enrolled in the EAP, and continues to perform duties on site.

Review and Findings:

An inspector observed Mr. E's performance during several surveillance tests and found it to be adequate.

Facts Established by Team:

Mr. E had a positive drug test in 1988.

3.4.3 Allegation:

In a taped conversation between the alleger and Mr. D, Mr. D stated that Mr. D, Mr. F and Mr. G had been involved in drug use.

NMPC Evaluation:

NMPC had received a copy of the tape in July 1988. Mr. G had already been fired when the alleger provided the tape. Mr. F had not previously been tested due to insufficient cause; however, he had been questioned during NMPC's drug investigation in April 1988 with no conclusive results. NMPC did not test Mr. D on the basis that the information was dated (greater than two years old) and on counsel from their Employee Relations personnel. When questioned on May 25, 1989, Mr. D had no recollection of making the statements recorded on the tape and denied that he or the others used drugs.

Review and Findings:

The inspectors reviewed a copy of the transcript of the tape.

Facts Established by Team:

The team confirmed that the tape recording existed and that in it Mr. D discussed drug use. Also, Mr. G had a positive drug test in 1988 and had been fired for drug possession on NMPC property.

3.4.4 Allegation:

In 1984 Mr. H, the I&C superintendent (since deceased), told the alleger that cocaine use by NMPC management was widespread.

NMPC Evaluation:

NMPC was not aware of this allegation.

Security personnel revealed that they have never received any other allegations related to cocaine use by NMPC personnel. Additionally, Security questioned an I&C supervisor and several I&C technicians during the inspection, and none of them had any knowledge of cocaine use by NMPC managers nor of any rumors of cocaine use. Based on the death of the superintendent and the lack of specifics, NMPC did not plan to evaluate this allegation further.

Facts Established by Team:

Mr. H died in 1985 of cancer.

3.4.5 Allegation:

The NMPC drug testing program was not carried out in that the alleger should have been drug tested while employed at Nine Mile Point from October 1984 to July 1986 and was not, and he was not aware of any Operations or I&C personnel who were drug tested.

NMPC Evaluation:

NMPC was not aware of this allegation.

The alleger was pre-employment drug tested on September 10, 1984. During the employment of the alleger, a random/periodic drug testing program had not been implemented at Nine Mile Point, although various proposals had been discussed between management and union representatives. During this period all nuclear employees were drug tested prior to employment and were subject to drug tests if appearing unfit for duty. Accordingly, Operations and I&C personnel would have been tested only if the above conditions applied.

Facts Established by Team:

The team confirmed that no random or periodic drug testing was performed on the alleger. NMPC policy did not require random or periodic testing (outside of EAP) of any employees during the alleger's employment and was not required by NRC regulations to do so. A pre-employment drug test of the alleger was performed in accordance with NMPC's program at the time.

3.4.6 Allegation:

I&C employees routinely attended parties where drugs were used.

NMPC Evaluation:

NMPC was not aware of this allegation.

During the interviews discussed above, NMPC investigators questioned several I&C technicians regarding drug use, and they reported no knowledge of drug use by other I&C technicians. NMPC did not plan to pursue this allegation further based on its general nature, the lack of specifics, and drug testing to be implemented in response to recent NRC fitness for duty rulemaking.

Facts Established by Team:

The previous investigations did find three I&C technicians who tested positive for drugs.

Overall Conclusion on Illegal Drug Use:

NMPC had investigated illegal drug use based on an anonymous allegation in April 1988 and the taped conversation received from the alleger in July 1988. The following conclusions could be made relative to the eight individuals referenced in the current allegations, based on the NMPC investigations in 1988 and during the inspection:

- One individual (G) tested positive for drugs and was later fired for drug possession on NMPC property.
- Two individuals (A&E) tested positive for drugs and entered the employee assistance program. They have returned to work onsite and have passed continuing random drug tests.
- Three (B, D and F) individuals were not drug tested during the investigation. However, only one individual (D) was implicated at that time and NMPC concluded that there was insufficient cause to require a drug test. One (B) of these individuals was subsequently drug tested in 1989 prior to a promotion and passed the test. All three individuals have been interviewed and denied using drugs.
- Two supervisors (C and H) were alleged to be aware of drug use. One (C) denied any such knowledge, and the other (H) died in 1985 of cancer.

The team did not attempt to directly investigate the drug allegations. In its investigations NMPC was unable to directly substantiate any of the alleger's specific drug allegations; however, as noted above, three I&C technicians had positive drug tests as a result of followup to the anonymous allegation of April 1988. The performance of these three technicians was reviewed by NMPC and found to be acceptable.

The team concluded that three of the six individuals alleged to have used drugs in 1986 subsequently tested positive during the 1988 investigation, substantiating, in part, that drugs were likely used and that the Fitness for Duty Program in effect at that time did not detect their use. Further, the team concluded that NMPC had addressed the drug allegations consistent with the NMPC Fitness for Duty Program, which met existing NRC policy. However, this program will be upgraded to confirm to the new 10 CFR Part 26, including random drug testing, and will be the subject of future inspections.

The allegation regarding NMPC not carrying out their drug testing program, due to lack of random or periodic drug tests, was apparently based on the false premise that such testing was required. In fact, NMPC did not have such a program and was not required to do such testing.

Regarding the general allegations of NMPC managers using cocaine and I&C technicians at parties using drugs, the team concluded that the lack of specific information and the death of the I&C superintendent prevented a meaningful investigation by NMPC and that drug testing to be implemented as part of the recent rule on fitness for duty would be the best method for determining if these allegations have merit.

The team concluded that NMPC had performed an adequate investigation of the drug allegations received in 1988 and those recently provided by the NRC.

4. CONCLUSIONS

The team concluded that while specific facts in the allegation on HPCI, a drywell fire, and Monthly Operating Reports were in part substantiated, and with one exception did not constitute violations of NRC requirements. The NRC concludes that weaknesses in work control associated with HPCI switch calibration and welding in the drywell are additional examples of the failure of NMPC in 1986 to aggressively identify and correct problems.

The NRC is concerned that the NMPC Fitness for Duty Program, implemented pursuant to the NRC's policy statement, has not been effective in detecting or determining illegal drug use. The team found that three of six individuals alleged to have used illegal drugs in 1986 subsequently tested positive during NMPC's 1988 investigation, substantiating in part the allegation that illegal drugs were likely used and that NMPC's Fitness for Duty Program in effect at the time did not detect their use. The team concluded that NMPC's investigations in 1988 of illegal drug use by NMPC personnel and the resultant actions appeared consistent with the NMPC Fitness for Duty Program as revised in April 1987. The Fitness for Duty Program is currently being upgraded to meet NRC's new rule on Fitness for Duty (10 CFR Part 26) and will be the subject of subsequent inspections.

These conclusions were provided to NMPC management during the inspection and at an exit meeting conducted on May 25, 1989.

ATTACHMENT TO STI
IR 50-220/87-16

NIAGARA MOHAWK POWER CORPORATION

NIAGARA MOHAWK

300 ERIE BOULEVARD WEST
SYRACUSE, N.Y. 13202

WILLIAM J. DONLON
PRESIDENT

RECEIVED
MAR - 9 1987
NUCLEAR GENERATION

March, 1987

To: All Employees

Niagara Mohawk has a continuing concern and responsibility to provide a safe and healthy work place and an obligation to ensure that no employee endangers the safety of others. In today's society with the notoriety surrounding widespread use of illegal drugs, it is imperative that we maintain a drug-free environment within our work force. A drug-free environment is in the best interest of all of us as employees and assures our co-workers, families, customers and the general public that we are addressing this problem in a positive light.

To this end, we have revised our Alcohol and Drug Abuse Policies including our Fitness for Duty Program. Effective April 1, 1987, it will be the responsibility of every employee to notify the Company of any suspected instances of use, possession or being under the influence of alcoholic beverages or illegal drugs on Company property. In addition, employees with nuclear responsibility will not be allowed to continue employment in any nuclear-related area pending full investigation of any illegal drug-related occurrence.

Along with these revisions to the policies and, again, effective April 1, 1987, employees will be subject to alcohol/drug screening/testing under the following situations:

- Any employee involved in an occupational accident causing personal injury and/or damage to equipment where human error appears to be the cause;
- Any employee subject to management pre-promotional physical examination will be screened for drugs;
- All employees at the nuclear site who are required to have physical examinations will be screened for drugs on an annual basis.

The above is in addition to our present procedure of alcohol/drug screening/testing, whichever is applicable, for all prospective applicants and any employee deemed to be unfit in the performance of duties as a result of alcohol/drugs.

In addition, the current Fitness for Duty Program has been revised to include a procedure that provides for rehabilitation in instances where there appears to be an alcohol and/or drug abuse problem. We feel that this is a positive direction which will provide our employees continuing support in dealing with these problems.

NIAGARA MOHAWK POWER CORPORATION

COMPANY POLICY

DRUG ABUSE

Generally speaking, employees of the Company are visible and active members of the communities in which they live and work. They are quite naturally identified with the Company and are expected to represent the Company in a responsible manner. The use of illegal drugs by employees is inconsistent with the objectives of operating the Company in a safe and efficient manner.

Therefore, the use, possession, sale or purchase of illegal drugs (defined as any drug or drug-like substance whose sale, use, purchase or possession is unlawful) while on the job or on Company property is prohibited. Any illegal substances will be turned over to the appropriate law enforcement agency and may result in criminal prosecution. Additionally, no employee shall report to work while under the influence of illegal drugs.

Off-the-job illegal drug use which adversely affects an employee's job performance or which jeopardizes the safety of other employees or Company equipment will be addressed.

In addition, every employee has the responsibility of immediately notifying their supervisor of any suspected instances of use, possession or being under the influence of such substances which occur on Company property.

Employees who are arrested for off-the-job drug involvement will be considered to be in violation of Company policy. In deciding what action to take, the Company will consider the nature of the charges, the employee's present job assignment, the employee's record with the Company and other factors pertinent to the impact of the employee's arrest upon the conduct of the Company business. In any instance, employees with nuclear responsibilities will not be allowed to continue employment in any nuclear-related area pending full investigation of the incident.

Abrogation of this Policy may result in disciplinary action up to and including discharge.

Assistance in dealing with drug-related problems is available through the Employee Assistance Program. Employees who voluntarily request assistance in dealing with drug problems may participate in the EAP without jeopardizing their continued employment with the Company, providing they follow the prescribed course of treatment and refrain from further involvement with drugs.

Prescribed medical treatment with a controlled substance should be reported to the supervisor when an employee's ability to perform the job assignment in a safe manner is affected. The use of controlled substances as part of a prescribed medical treatment program is naturally not grounds for disciplinary action. However, it is important for the Company to know such use is occurring as a temporary job reassignment may be necessary.

John G. Haehl, Jr.
Chairman of the Board/Chief Executive Officer

William J. Donlon
President

ISSUED: December 15, 1978
REVISED: January 1984
April 1, 1987

NIAGARA MOHAWK POWER CORPORATION

COMPANY POLICY

ALCOHOL ABUSE

Generally speaking, employees of the Company are visible and active members of the communities in which they live and work. They are quite naturally identified with the Company and are expected to represent the Company in a responsible fashion. The abuse of alcoholic beverages by employees is inconsistent with the objectives of operating the Company in a safe and efficient manner.

Therefore, no employee shall consume alcoholic beverages during working hours (regular or overtime) and during meal hours (noon, overtime or emergency call-out). Additionally, no employee shall report to work under the influence of alcoholic beverages or possess alcoholic beverages on Company property. When the use of alcohol adversely affects an employee's job performance, it is imperative that the Company address the situation.

In addition, every employee has the responsibility of immediately notifying their supervisor of any suspected instances of use, possession or being under the influence of alcoholic beverages which occur on Company property.

Abrogation of this Policy may result in disciplinary action up to and including discharge.

Assistance in handling alcohol-related problems is available through the Employee Assistance Program. Employees who voluntarily request assistance in dealing with alcohol problems may participate in the EAP without jeopardizing their continued employment with the Company, providing they follow the prescribed course of treatment and their work performance is acceptable.

John C. Haehl, Jr.
Chairman of the Board/Chief Executive Officer

William J. Donlon
President

ISSUED: October 15, 1975
REVISED: April 1, 1987

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NIAGARA MOHAWK POWER CORPORATION

EMPLOYEE ASSISTANCE PROGRAM

The Employee Assistance Program (EAP) provides confidential professional guidance and counseling to help employees resolve personal problems which adversely affect job performance. It is designed to provide assistance to employees and their families in handling a wide range of personal problems including alcohol and/or drug dependency or abuse. It is the Company's intent that each employee has the opportunity to achieve full job potential and where personal problems interfere with this goal, the EAP can be of valuable assistance.

Employees may obtain professional assistance through the Employee Assistance Program in the following ways - self referral (including family referral), supervisory referral, union referral, or medical referral. In addition, employees should be aware that the EAP Coordinator will be available for assistance and guidance in obtaining help for a co-worker who may be having personal or job performance problems.

Through the EAP, employees receive confidential help in assessing their problems and where appropriate, referrals to outside resources for treatment and assistance. If employees are referred to outside resources such as doctors, psychologists, hospitals or clinics, the employees will be responsible for charges in excess of those covered under the Company's Medical Plan.

Employees are strongly urged to contact the EAP Coordinator before alcohol, drug or personal problems lead to disciplinary action. Participation in the EAP will not prevent or lessen disciplinary action for poor job performance or violation of Company policy. However, employees who voluntarily request assistance in dealing with alcohol and/or drug problems may participate in the EAP without jeopardizing their continued employment with the Company, providing they follow the prescribed course of treatment and refrain from further involvement with alcohol and/or drugs.

This confidential Employee Assistance Program is available through the Company EAP Coordinator. Referrals may be made by calling the EAP Coordinator at (315) 428-5901. If the EAP Coordinator is out of the office, your confidential call will be recorded and a response provided as soon as possible. The EAP Coordinator's office is located at Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, New York 13202.

Consultation with the EAP Coordinator is not intended to preclude the present advice and counseling provided by staff members of the Employee Relations Department.

ISSUED: January 1984
REVISED: April 1, 1987

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NIAGARA MOHAWK POWER CORPORATION

EMPLOYEE GUIDELINES
REGARDING
COMPANY ALCOHOL/DRUG ABUSE POLICY - FITNESS FOR DUTY PROGRAM

These guidelines are for use by all employees to help make Niagara Mohawk a "drug-free" work place and to ensure added confidence that Niagara Mohawk employees comply with the Company's Alcohol Drug Abuse Policy.

1. Every employee has a responsibility to help keep Niagara Mohawk a "drug-free" Company

2. Employees who are arrested for an alcohol or drug related offense off Company property should report the incident to their supervisor immediately. The matter will be reviewed with the Employee Relations Department prior to the employee reporting to work.

3. Employees who have a drug and/or alcohol problem are urged to voluntarily obtain professional assistance through the Employee Assistance Program.

4. Employees who have an alcohol/drug problem and who ask for help should be referred immediately to the Company's Employee Assistance Program. This request for assistance may not be used by an employee as a means of avoiding disciplinary action if such employee has violated the Company's Alcohol/Drug Abuse Policy, any other policy or safety rule.

5. Every employee has the responsibility for taking action whenever a co-worker appears to be having problems and seems to be impaired by the possible use of alcohol and/or drugs. Every employee has the responsibility of immediately notifying their supervisor of any suspected instances of use, possession or being under the influence of such substances which occur on Company property. In addition, employees should be aware that the EAP Coordinator will be available for assistance and guidance in obtaining help for a co-worker who may be having personal or job performance problems.

6. Whenever an employee's demonstrated judgment or performance seems to be impaired by the possible use of alcohol and/or drugs and the supervisor suspects the employee is "unfit for duty" the following action should be taken:

    a) At the request of the supervisor, the employee should explain why it appears that he/she may be unfit for duty. A bargaining unit employee may request a steward present.

    b) If the employee fails to explain his/her impaired condition to the supervisor's satisfaction, and it is still the supervisor's determination that alcohol and/or drugs may be involved, the employee will be taken by the supervisor or another management employee to the designated medical facility for alcohol and drug testing.

    c) The employee will be required to sign a Consent and Authorization Form prior to such alcohol and drug tests.

    d) Any employee who refuses to sign a Consent and Authorization Form will be considered in violation of the Fitness for Duty Program and will be disciplined accordingly.

7. Employees who find drugs or drug paraphernalia on Company property should report the incident to the Security Department, your supervisor and the Employee Relations Department. The Security Department will then advise as to the specific course of action to be followed.

ISSUED: April 1, 1987

ALCOHOL/DRUG SCREENING/TESTING -
FITNESS FOR DUTY PROGRAM

I. ALCOHOL/DRUG SCREENING/TESTING

A. Continuing

(1) All applicants, prior to employment, will be screened for drugs.

(2) Any employee who appears to be unfit for duty will be subject to alcohol/drug screening/testing.

B. New

(1) Any employee involved in an occupational accident causing personal injury and/or damage to equipment where human error appears to be a cause will be subject to post accident alcohol/drug screening/testing.

(2) Management pre-promotional physical examinations will include drug screening.

(3) All employees at the nuclear site, who are required to have physical examinations, will be required to be screened for drugs on an annual basis.

II. PROGRAM TEST RESULT CRITERIA

A. Alcohol

The "cutoff" for positive/negative presence of alcohol in the body will be .08% and over, of one gm content by weight of alcohol in blood alcohol content level.

B. Marijuana

The "cutoff" for the positive/negative presence of marijuana in the body will be 50 nanograms/milliliter. If positive, such result will be further analyzed.

C. Other Illegal Drugs

Any positive screening of illegal drugs shall be further analyzed.

III. CONSENT AND AUTHORIZATION FORM/LETTER

(1) Any employee who is subject to a fitness for duty or post accident alcohol/drug screening/testing will be required to sign a Consent and Authorization Form prior to such screening/testing.

(2) Any employee at the nuclear site who is required to have a physical examination will also be required to be screened for drugs on an annual basis and sign an Employee Consent and Authorization Letter prior to such drug screening including documentation of any prescription drugs which may be in the system.

(3) Any employee refusing to sign a Consent and Authorization Form/Letter will be considered in violation of the Fitness for Duty Program and will be disciplined accordingly.

NEW REHABILITATION PROCEDURE

A. Fitness for Duty/Post Accident

(1) Any employee suspected to be positive for either alcohol or drugs will be immediately suspended with pay.

(2) If the employee is found to be negative without alcohol/drugs in the system, the employee will be returned to work without loss of pay.

(3) An investigatory proceeding will be held in an expeditious manner. Where applicable, an Article XVI proceeding will take place as soon as possible.

(4) If the Company, in its determination, is satisfied that the employee was positive with drugs in the system, the employee will continue to be suspended, however, without pay in accordance with the provisions of Paragraph C below. Further, the employee will be required to make contact with the Employee Assistance Program Coordinator or other source acceptable to the Company.

B. Drug Screening/Testing-Nuclear

(1) Any employee found to be confirmed positive with drugs in the system will be immediately suspended without pay.

(2) An investigatory proceeding will be held in an expeditious manner. Where applicable, an Article XVI proceeding will take place as soon as possible.

(3) If the Company, in its determination, is satisfied that the employee was positive with drugs in the system, the employee will continue to be suspended, without pay in accordance with the provisions of Paragraph C below. Further, the employee will be required to make contact with the Employee Assistance Program Coordinator or other source acceptable to the Company.

C. General

(1) In the case of a positive confirmation, the employee will be suspended without pay for a minimum period of 14 calendar days and a maximum of 28 calendar days.

(2) If it is indicated that there is an abuse problem, the employee must follow the prescribed course of rehabilitation and will be required to furnish evidence of such course of rehabilitation to the Company.

(3) If the employee, upon re-examination by the Company on the 13th, 19th or 26th calendar day and is found to be completely negative of any alcohol/drugs in the system, such employee will be permitted to return to work on either the 15th, 22nd or 29th calendar day after initial completion of said suspension. However, return to work will only be made with assurances the employee is following the prescribed course of rehabilitation. No employee will be returned to the payroll until test result is negative.

(4) Any employee who does not test negative on alcohol/drugs in the system within 28 calendar days will be terminated.

(5) Any employee who once has been tested positive and has gone through a prescribed course of rehabilitation will be subject to spot check alcohol/drug screenings/testings for a two-year period and will be required to sign a letter acknowledging such understanding.

(6) Any employee found positive during the two-year period following rehabilitation will be terminated.

ISSUED: April 1, 1987

Enclosure 2

Review of Information Related to "Prior" Allegations

1. #11 CRD Pump Vibrations (Allegation 1)

   a. Were Greg Yakel and Greg Green interviewed?

   - Greg Yakel was interviewed by Niagara Mohawk Power Corporation (NMPC) on July 18, September 17, and September 18, 1986. He stated that he had only hearsay information and no records regarding CRD pump vibration. His recollection was hearing that the technicians were told to stop vibration readings to prevent a shutdown prior to the outage; he was not directly involved.

     The NRC team leader reviewed records of the NMPC interviews and directly interviewed Mr. Yakel on May 23,1989. During the 1989 interview he stated that the only interview with the NRC he recalled was regarding the LPRM issues and corroborated the above.

   - Greg Green was interviewed by NMPC on September 18, 1986. He stated that he and Ed Shaperjahn had performed the CRD pump vibration tests but that he was unaware of the alleged problems, that vibration tests were discontinued because the vibration levels were not significant, and that he had no records.

     The NRC team leader reviewed the NMPC interview records and directly interviewed Green on May 23, 1989; he corroborated the above and stated that he had not been interviewed by the NRC previously. Also, he stated that vibration testing was continuously recorded over three days during the same 1986 period on the adjacent #12 CRD Pump due to sporadic vibration alarms. These recorded vibration traces did not show a problem and were discarded. Green hypothesized that these traces may have been misconstrued to be the "missing" records.

   - The NRC team leader reviewed Work Request 37429, completed February 20, 1986, which described the replacement of a vibration alarm switch on #12 CRD Pump. Although this work could have involved vibration testing that was subsequently terminated, the team leader concluded that Mr. Green's hypothesis was unlikely to resolve the allegation.

   - The NRC team leader interviewed Ed Shaperjahn on May 23, 1989; he stated that he had not been interviewed by NRC previously. Also, he corroborated Greg Green's information and stated that he knew of no one with records.

b. Was Charlie Stebbins interviewed?

- Charlie Stebbins was interviewed by NMPC on July 18, August 15, and September 16, 1986. He denied any direct knowledge of CRD pump vibration problems or that he had heard anything on them from Greg Yakel. He claimed that the conversation taped by Doug Ellison had been edited to insert Yakel as the person who knew of the problem and had records.

  The NRC team leader reviewed the NMPC interviews and interviewed Stebbins on May 23, 1989. He corroborated the above and did not recall any previous NRC interview. In the transcript of the July 16, 1986 conversation between Stebbins and Ellison, Stebbins stated that he had been told of a problem by a fellow technician and wanted to keep this individual anonymous. Stebbins stated, "One of the guys in the shop found a problem during the first part of the outage...(but a supervisor told him) it's not important, we don't need it....this guy's got documentation of them (expletive deleted) doing that." Stebbins never stated what the problem was. The team leader concluded that Stebbins definitely knew of a problem, but that Ellison may have incorrectly assumed that it was the CRD pump vibration issue and that Yakel was the person with the information and documentation.

  The team leader reinterviewed Stebbins on May 25, 1989, and inquired as to what the problem was that was referenced in the July 16, 1986 conversation. Stebbins stated that he did not remember. Further, Stebbins stated that he was not aware of any current problems which had not been addressed. The team leader gave Stebbins the phone numbers at which he could be reached if he remembered the problem, but there has been no follow-up phone call.

c. Were the vibration strip charts reviewed in the I&C files?

- The inspector who reviewed this allegation during the 1986 Special Team Inspection (STI) no longer works for NRC, and whether he reviewed the strip charts cannot be determined. The team leader reviewed the strip charts in the I&C files and did not find anything to alter the conclusions of the STI. The files contained six tests on the #11 CRD Pump between January 14, 1986 and February 11, 1986 and #12 CRD Pump tests on January 10, 1986 and February 20, 1986.

d. Since the pump caused a subsequent shutdown and was not operated for most of the interim period, is this evidence that the pump really did have problems which were ignored?

- The CRD pumps definitely have had operational problems. The pumps are high discharge pressure, low flow pumps that have continually experienced mechanical difficulties. The NMPC CRD pump file contained a June 30, 1987 NMPC memorandum that stated, "CRD pump problems are documented for 17 years." NMPC was aware of the pump problems. There is no evidence to support that NMPC has "ignored" the problems. During the period in question, the #11 CRD pump was overhauled three times (completed on January 21, January 24, and February 10, 1986), including replacing bearings, bushings, bearing oilers, balancing discs, etc.. When returned to service, the vibration results and hydraulic parameters were acceptable. The issue of being unable to correctly determine the root cause of the problem is considered different from ignoring the problem.

e. Yakel should be reinterviewed and if given immunity from previous lies he told NRC, he will tell the truth.

- As noted above, the team leader interviewed Greg Yakel on May 23, 1989, and he corroborated his previous interviews in that he claimed only hearsay information on the CRD pumps. Immunity and any "previous lies" were not addressed.

Conclusion: The CRD pump vibration issue was resolved properly and accurately by the 1986 STI. The additional 1989 review did not alter the previous findings. It appears that Ellison improperly connected an unspecified problem mentioned by Charlie Stebbins with the CRD pump issue. If there is documentation or information to support the allegation, it has not been presented to NRC.

2. Helium Leak Test of Stack Gas System (Allegation 2)

The leak test was inadequate because the system operates at negative pressure.

- The 1986 STI concluded that the inadequate testing of the stack gas monitoring system was compensated for by the weekly bubble test of the system. At the time, the old system (OGESMS) and the new system (RAGEMS) were operated in series. As a result, the system was operated at positive pressure; snoop (bubble) testing was thus an effective check for leakage.

  The inspector reviewed the ongoing modifications to the stack gas monitoring system to be completed during the present Unit 1 outage and reviewed the two procedures to leak test the system in different configurations; a temporary procedure when the system has positive pressure and a procedure to be performed once per operating cycle when the system is operating at a vacuum (it will use irritant smoke to detect leakage). The inspector concluded that the proper test method for the system pressures had been used and would be used.

Conclusion: The leak test issue was resolved properly and accurately by the 1986 STI. The snoop (bubble) test was an adequate check for leakage, because at that time the system was operated at a positive pressure in a series alignment.

3. Feedwater Check Valve Leak Test (Allegation 3)

Did Region I follow up on the unresolved aspect of the technical acceptability of the tests (Unresolved Item 50-220/86-17-02)?

- The 1986 STI substantiated the allegation that 100 psig air was used to seat the feedwater check valve before applying a leak test pressure of 35.5 psig. The technical acceptability of applying 100 psig pressure was questioned in the report and documented as an Unresolved Item. The use of 100 psig pressure was not covered in the test procedure, and this was identified as an apparent violation.

  Previously, by letter dated February 17, 1987, NMPC had addressed justification of the test method, including application of 100 psig pressure between the inboard isolation valve and the feedwater check valve. However, after discussion with the NRC, NMPC had withdrawn this position in a letter dated November 7, 1988. The test procedure was revised to specifically include a caution statement against exceeding 37 psig pressure during charging of the cavity area in between the two valves. The inspector reviewed the revised test procedures and the documented closeout of this unresolved item in NRC Inspection Report 50-220/89-02.

Conclusion: Region I has tracked and reviewed resolution of the previous unresolved item regarding the acceptability of applying 100 psig pressure to seat the check valve prior to leak testing it. Closeout of this issue is documented in NRC Inspection Report 50-220/89-02, dated March 10, 1989.

4. Freeing the Stuck Feedwater Check Valve (Allegation 4)

Was Unresolved Item (50-220/86-17-03) closed out? Is the conclusion consistent with the unresolved item?

- The 1986 STI unresolved item questioned NMPC's position that the HPCI System could remain operable despite having a stuck closed feedwater check valve. (On June 21, 1986 when the check valve was found to be stuck closed, HPCI was declared inoperable.) Historically, NMPC had considered that the need for redundancy within the HPCI System (a mode of operation of two feedwater pumps, not a turbine-driven pump) was restricted to the active components upstream of the common piping header within the feedwater system. This scope included the redundant pumps, but excluded the two feedwater lines downstream of the last stage of feedwater heaters and the feedwater check and isolation valves.

  By letter dated May 28, 1987, NMPC had stated its position that the two flow paths downstream from the common header in the high pressure portion of the feedwater system would be considered redundant components for determination of HPCI operability. NMPC established this position in a written interpretation for echnical Specification

3.1.8 to address necessary component redundancy in the HPCI System. Unresolved Item 50-220/86-17-03 was closed out in NRC Inspection Report 50-220/87-07, dated July 30, 1987.

The inspector reviewed the letter and the interpretation and concluded that the interpretation was consistent with the letter's position and that the previous close out of the unresolved item was correct.

Conclusion: Region I has tracked and reviewed resolution of the previous unresolved item regarding the need for redundant feedwater flow paths in order for HPCI to be operable. Closeout of this issue is documented in NRC Inspection Report 50-220/87-07, dated July 30, 1987.

5. LPRM Connectors (Allegation 5)

Was Scott Barber interviewed?

- NMPC interviewed Scott Barber on July 18, 1986 and August 28, 1986. Based partially on Scott Barber's statements, NMPC concluded that the allegation regarding installation of LPRM connectors by unqualified, unsupervised technicians could not be substantiated.

  The STI team leader interviewed Scott Barber on May 23, 1989. He stated that he had not been interviewed by NRC previously. He corroborated his previous statements to NMPC that he had not been unsupervised while working on LPRM connectors and that Doug Ellison had never brought this issue to his attention.

Conclusion: The LPRM connector issue was resolved properly and accurately by the 1986 STI. The additional 1989 review did not alter the previous findings.

6. Improper QC Involvement (Allegation 8)

a. Did Region I verify that QC observed the LPRM work during the 1986 outage?

- During the 1986 STI Region I attempted to verify whether QC observed the LPRM connector work under the vessel. However, there was no practical way to substantiate interview statements. The QC Inspection Reports (QCIRs) were not clear on whether the under vessel work was directly observed or the paperwork was reviewed. In interviews conducted by 1986 STI inspectors, QC personnel claimed that they had observed under vessel LPRM work prior to the 1986 outage. However, even review of Radiation Work Permits (RWPs) would not have been conclusive as the radiological boundary was a distance away from the drywell and despite signing on an LPRM RWP a QC inspector could (and sometimes did) observe the work from the entry to the under vessel area.

The supplemental report to the NMPC investigation on page 42 concluded, "Although inspections of LPRM connectors were performed in the past, they were not done during the 1986 outage due to ALARA related issues." The STI inspection report stated that "QC had previously conducted physical examinations and observations of LPRM connector work during previous outages between 1984 and 1986."

The STI found that whether QC directly observed work under the vessel was not of major significance in the QC involvement issue because of the following:

--- Both upscale and downscale failures would fail safe, in that a reactor scram would occur.

--- There were no QC inspection hold points, and half of the LPRMs were considered nonsafety-related.

--- Post-maintenance testing (electrical tests) verified operability.

--- QC inspectors had been instructed to avoid the under vessel area in general due to ALARA considerations.

b. Did Region I pursue whether documents were manipulated to not require QC observations (e.g., "cleaning" vs "replacing" connectors)?

- The 1986 STI concluded that regarding "the LPRMs there was an apparent programmatic deficiency in controlling the materials, procedural compliance and QC involvement to ensure quality. First line supervision's knowledge and participation in the ongoing LPRM problem was evident." Perhaps, the inspection report could have been more blunt in identifying the nature of the many shortcuts taken by I&C, including the manipulation of documents to avoid QC involvement.

  The NMPC investigation report available during the 1986 STI concluded that "Technicians wroted (sic) cleaned when an actual replacement was made to avoid filling out a procedure and QC involvement."

c. Why didn't Wade Joseph follow up on lack of paperwork which Ellison brought to his attention?

(Doug Ellison talked on pages 168 and 169 of his testimony of a July 10, 1986 conversation with Wade Joseph, in which Wade asked Doug to fill out the paperwork for the work involving installation of the different design LPRM connectors purchased with petty cash. Doug stated that Wade "said the procedure has always been filled out when the connector is changed and I challenged him at that time to find me one, which he couldn't.")

- We cannot answer this question. Wade Joseph chose to work in another location and now performs an NMPC training function in the Buffalo, N.Y. area. NMPC interviews of Joseph did not address this area. The 1986 STI did not specifically address the issue. Also, there was little time between the above conversation on 3 p.m., Thursday, July 10 and when the resident inspector went under the vessel less that 24 hours later and the whole allegation process began.

Conclusion: The involvement of QC in LPRM connector work was resolved properly by the 1986 STI. The additional 1989 review did not alter the previous findings. The STI inspection report could have better identified the numerous errors and problems.

7. Harassment and Intimidation (Allegation 10)

Region I plans to address harassment and intimidation in a separate inspection to be completed prior to NMP-1 restart.

8. Documentation for IRM Connector Replacement and Surveillance Testing (Allegations 11 and 12)

This issue was left open pending receipt of the NMPC investigation report. How was it resolved and was the response adequate given evidence by Ellison?

- Mr. Ellison's "evidence" is central to the point in that he claimed IRM 18 was replaced and not subsequently surveillance tested properly. Contrary to Mr. Ellison's information, four other people known to be part of the job either could not confirm that IRM 18 was replaced or claimed it was not replaced. Similarly conflicting versions of the testing performed were provided during the 1986 STI.

  During the 1986 STI, the NMPC investigators indicated that further investigation might provide more definite conclusions regarding the replacement and the testing. However, no breakthroughs occurred and the investigation eventually concluded that "Mr. Ellison's claim that tests of the IRM's should have required more than two hours is not substantiated...." Kurt Yackel, an assistant supervisor who was a very credible witness, stated that testing was done, and this was supported by process computer alarms for the IRMs being bypassed.

  Based on the lack of any definite proof of falsified testing and circumstantial evidence to the contrary, this allegation was left to stand on the conclusions of the 1986 STI inspection report, i.e., "the conclusions regarding the unauthorized/undocumented replacement of LPRMs in Section 4.5 also applied to IRMs." The STI judged that this issue did not merit designation as an open item, and as such, it did not have a documented closeout.

Conclusion: The testing of IRM connectors was properly assessed by the 1986 STI. The additional 1989 review did not alter the previous findings.

9. Radiological Control and Tool in Reactor Vessel (Allegations 13 and 14)

Submitted by someone other than Ellison

- Contrary to the above statement, Doug Ellison related these allegations to NRC Region I inspector Glenn Meyer on July 23, 1986, the morning following his transcribed testimony, in response to a question Mr. Meyer asked inquiring if there were any other concerns of which the NRC should be aware.

These two issues were addressed in the 1986 STI inspection report and were subsequently closed out in other inspection reports.

Overall Conclusion:

Based on the Region I assessment of the issues provided by the alleger and the information developed as a result of the 1989 STI follow-up, Region I has determined that actions taken as a result of previous allegations from this alleger were appropriate. No new information was provided which impacted the 1986 STI conclusions.

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406

18 JUL 1989

Enclosure 3

Docket No. 50-220
File No. RI-89-A-0043

Mr. Douglas S. Ellison
P.O. Box 1583
New Smyrna Beach, FL 32170

Dear Mr. Ellison:

Subject: Allegations Concerning Nine Mile Point Unit 1

In August 1988 you raised concerns to NRC personnel regarding 1986 incidents at Nine Mile Point Unit 1 which were not previously known by NRC. These concerns involved the reliability of the High Pressure Coolant Injection (HPCI) system, the absence of reporting of an April 27, 1986 drywell fire, the omission of Local Power Range Monitor (LPRM) work from Monthly Operating Reports, and alleged illegal drug use.

NRC Region I has completed a Special Team Inspection to address these safety concerns. Enclosure (1) is the report of that inspection.

During the August 1988 interview you also provided information and raised questions regarding the handling of certain concerns in the 1986 Special Team Inspection (50-220/86-17). Enclosure (2) is the NRC staff's review of that information and responses to your questions. Further, an additional inspection is planned to review alleged harassment and intimidation at Nine Mile Point. You will receive a copy of this inspection report when complete.

Should you have any questions, please address them to me in writing at the above address.

Sincerely,

Samuel J. Collins, Deputy Director
Division of Reactor Projects

Enclosures:
1. Inspection Report 50-220/89-16
2. Review of information related to "prior" allegations

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
631 PARK AVENUE
KING OF PRUSSIA, PENNSYLVANIA 19406

22 JAN 87

Docket No. 50-220
50-410

Niagara Mohawk Power Corporation
ATTN: Mr. C. V. Mangan
Senior Vice President
301 Plainfield Road
Syracuse, NY 13212

Gentlemen:

Subject: Combined Inspection Nos. 50-220/86-17; 50-410/86-61

This refers to the special team inspection conducted by this office on August 25-29, 1986 and to the discussions of our findings held by Mr. Samuel J. Collins with yourself and members of your staff at the conclusion of the inspection. The inspection was of activities authorized by NRC License Nos. DPR-63 and CPPR-112 at the Nine Mile Point Units 1 and 2, Oswego, New York.

The inspection independently examined allegations related to operations, surveillance, maintenance and quality programs at Nine Mile Point Unit 1 that were provided to the Niagara Mohawk Power Corporation and the NRC by an instrument and control technician. The inspection assessed the safety significance and scope of the alleged technical issues and their broader programmatic implications for both units. The inspection also incorporated the results of a Region I investigator's preliminary review of your internal investigation of the allegations. Finally, our inspection reviewed the forced shutdown of Unit 1 on August 22, 1986, due to maintenance performed on the control rod drive system scram valves, as an independent measure of management's effectiveness in establishing and resolving the root cause of the problems.

We concluded that many of the circumstances described in the allegations were substantially true, but the technical significance of these substantiated allegations were found to be generally minor and no immediate safety concerns were identified. However, the team did conclude that there were some programmatic weaknesses in the NMPC management system that must be addressed. In particular, we concluded that problems identified by your staff are not always brought to the attention of management for resolution, problem review for root cause determination is in many instances weak, and operational quality assurance is not as effective as it should be in helping the line organization find and correct problems.

These issues were identified to you by the NRC during the course of our inspection and at the exit meeting conducted on August 29, 1986. Attachments 3, 4 and 5 are inspection reports which describe additional related issues. Additionally, we requested that you conduct your own investigation of the specific allegations and assess any broader issues they might indicate. While we believe that the overall management of Unit 1 is effective and that the weaknesses discussed above do not represent a fundamental problem that would seriously question the ability of NMPC to operate Unit 2 safely, we intend to schedule an enforcement conference to discuss these apparent violations and weaknesses with you including the results of your internal investigation and subsequent corrective actions. We will contact you to arrange a mutually agreeable date.

We appreciate your cooperation.

Sincerely,

William F. Kane, Director
Division of Reactor Projects

Enclosure: Combined NRC Region I Inspection Report Nos. 50-220/86-17 and 50-410/86-61 w/attachments

cc w/encls:
Connor & Wetterhahn
John W. Keib, Esquire
J. A. Perry, Vice President, Quality Assurance
W. Hansen, Manager of Quality Assurance
D. Quamme, NMP-2 Project Director
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T. J. Perkins, General Superintendent
R. B. Abbott, Station Superintendent
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T. Roman, Station Superintendent
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Nuclear Safety Information Center (NSIC)
NRC Resident Inspector
State of New York
Alleger

U. S. NUCLEAR REGULATORY COMMISSION
REGION I

Report Nos. 50-220/86-17
50-410/86-61

Docket Nos. 50-220
50-410

License Nos. DPR-63
CPPR-112

Licensee: Niagara Mohawk Power Corporation
301 Plainfield Road
Syracuse, NY 13212

Facility: Nine Mile Point Units 1 & 2

Location: Scriba, New York

Dates: August 25 - 29, 1986

Inspectors: E. Kelly, Senior Resident Inspector, Limerick
S. Kucharski, Resident Inspector, Limerick
C. Marschall, Resident Inspector, NMP-1
G. Napuda, Lead Reactor Engineer, DRS
R. Paolino, Lead Reactor Engineer, DRS
W. Raymond, Senior Resident Inspector, VY

Investigator: R. Matakas, Office of Investigations, RI

Team Leader: Samuel J Collins 1/22/87
S. Collins, Deputy Director, Division of Reactor Projects
Date

Approved by: 1/22/87
W. Kane, Director
Division of Reactor Projects
Date

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Attachments:

1. Letter W. F. Kane to C. V. Mangan, dated August 11, 1986
2. Letter J. C. Linville, Jr. to Alleger, dated August 18, 1986
3. Combined Inspection Nos. 50-220/86-16; 50-410/86-46 dated September 30, 1986; subject - Radiological Controls
4. Inspection Report No. 50-220/86-13 dated December 18, 1986; subject - Generic Letter 83-28 Followup Actions
5. Inspection Report No. 50-410/86-52, dated November 19, 1986, subject - QA Program Effectiveness and Quality First Program (QIP)

1. EXECUTIVE SUMMARY

Background

On July 11, 1986, while observing maintenance on local power range monitor (LPRM) connectors at Nine Mile Point Unit 1 (NMP-1), the NRC resident inspector received allegations concerning the connector qualification and installation techniques from an instrument and control (I&C) technician. The technician subsequently met with Niagara Mohawk Power Corporation (NMPC) representatives to convey his concerns. On July 22 the technician came to the NRC Region I office to discuss his concerns and to provide a sworn statement, which was transcribed. On August 11 an NRC letter was sent to NMPC enclosing a summary of the I&C technician's allegations. The letter acknowledged the ongoing NMPC investigation into the concerns and requested a written report of the results (See Attachment 1). The technician was subsequently notified of the NRC actions and advised to contact the Department of Labor (DOL) to address the concern alleging harassment by his supervision (See Attachment 2).

In an August 15 letter NMPC outlined its approach to investigation of the allegations and provided a summary report of the investigations and associated conclusions. NMPC concluded that no activities were found which would jeopardize the safe operation of the station. A meeting was subsequently held on August 18 to discuss the findings, and in an August 31 letter NMPC set forth the investigation findings relative to the allegations, including the evaluation methodology, short and long term remedial actions, and means to measure the effectiveness of those actions.

Purpose

The primary purpose of the inspection was to assess the impact of the allegations on the safe operation of NMP-1. Further, the inspection assessed the effect of the allegations on the pending Region I recommendation on the licensing of NMP-2. To achieve these purposes the inspection reviewed the validity of some parts of the allegations, reviewed the NMPC evaluation of the allegations, and assessed the technical significance of the allegations. Due to limited inspection resources the inspection was not intended to establish the validity of all aspects of the extensive allegations. Since the technician had presented the allegations to NMPC on July 15 and the August 11 NRC letter to NMPC had summarized the allegations to ensure that NMPC had received all the allegations, NMPC was responsible for the review of the complete scope of the allegations.

Inspection

For each allegation the inspection reviewed the allegation, determined the basic concern, and focused on the root cause of the technical issue from the perception of the NRC to assess the impact on Unit 1 and 2 programs. Plant hardware was inspected, independent reviews were performed, and extensive discussions and interviews were held with NMPC personnel. The bases for any conclusions were derived from inspection of the actual item or area, reviews of NMPC records, previous NRC inspection findings, established engineering knowledge and practice, and quality assurance records.

Further, the inspection reviewed portions of the ongoing NMPC investigation of the allegations to assess its effectiveness. Also, an evaluation of quality assurance programs at Unit 1 and Unit 2 was performed to evaluate the ability of these programs to identify and correct the problems associated with the allegations. Finally, a review of the Unit 1 forced outage on August 22 was performed concurrently with the NMPC evaluation to assess the effectiveness of NMPC's root cause determination and corrective actions.

Summary and Conclusions

Most of the allegations were found to be factually correct, however their safety implications were subsequently determined to be minor. The inspection did not find any significant adverse safety impact from the allegations on the operation of Unit 1. However, the quality assurance program was not as effective as it should be in reviewing operations and that it is unlikely to identify the type of problems associated with the allegations. The NMPC investigation was judged to be independent of adverse management influence and, given the time to complete its investigation, capable of establishing the facts surrounding the allegations.

Our reviews also indicated that there were programmatic weaknesses evident in the NMPC management system that allowed these issues to develop and in some instances spread. This conclusion was based on the results of the NMPC evaluation of the contributing factors to the allegations and on the NRC review of the NMPC evaluation of the August 22 forced shutdown due to CRD valve maintenance.

This report and related inspections (Attachments 3, 4 and 5) contain apparent violations which will be the subject of a future enforcement conference.

2. BACKGROUND

A chronological listing of the allegation history is presented in Table 1.

On July 11, 1986, while conducting an inspection of work in progress under the reactor vessel at Nine Mile Point Unit 1 (NMP-1), the resident inspector was approached by an instrument and control (I&C) technician, who indicated that there were problems with the local power range monitor (LPRM) connector replacement work. The inspector verified the validity of the technician's concerns and notified Niagara Mohawk Power Corporation (NMPC) management of his findings. The connectors were subsequently repaired. On July 14 the I&C technician (alleger) again contacted the inspector with other allegations concerning operations, surveillance, maintenance, quality program activities, and harassment by his supervisor and peers. The inspector encouraged the alleger to bring his concerns to NMPC management. On July 15 he met with the Vice President - Nuclear Generation, and an investigation was initiated by NMPC.

NRC Region I conducted an allegation panel meeting on July 15, regarding this allegation (RI-86-A-0080). The alleger and NMPC management were contacted, and arrangements were made to provide for the I&C technician to express his concerns directly to the NRC. On July 22 an investigative interview was conducted at the Region I Office in King of Prussia, PA, and two hundred fifteen pages of testimony were transcribed.

On July 31 a copy of the transcript and the NRC summary of the concerns were provided to the alleger for comment or correction. He agreed that the summary of allegations was an accurate listing of his concerns. Subsequently, on August 11 the summary of allegations was provided to NMPC (Attachment 1) and formally transmitted to the alleger on August 18 (Attachment 2).

During the period of August 4-7, a radiological controls inspection was conducted onsite, which incorporated the NRC review of the alleger's concern in this area (Attachment 3).

In an August 15 letter NMPC provided its approach to the investigation of the allegations and a summary report of its investigations and associated conclusions, which indicated that no activities were found which would jeopardize the safe operation of Unit 1. A meeting was subsequently held in Region I on August 18 to discuss these findings, and in an August 31 letter NMPC updated the report by submitting revised pages.

On August 22 NMP-1 was shut down as a result of maintenance performed on the control rod drive (CRD) scram valves.

During the period of August 25-29, the NRC special inspection was conducted to review the safety and programmatic implications of the allegations on the continued operation of Unit 1 and the potential licensing and operation of Unit 2. During the inspection NMPC made a presentation on their actions to date to identify and resolve the issues resulting from their internal investigation.

In an August 31 letter NMPC set forth their conclusions relative to the allegations and the corrective actions needed, including the background, the methodology used to evaluate the allegations, the short and long term remedial actions, and the means to measure the effectiveness of the corrective actions.

Table 1

1986 CHRONOLOGY OF NMP-1 ALLEGATIONS

January & February	-	CRD Pump repaired twice.
March	-	Allegation: vibration testing of CRD pump stopped to avoid reading which would require plant shutdown.
March 8	-	Plant shutdown for scheduled refueling outage.
March & April	-	Allegation: inadequate helium leak test of stack gas monitoring system.
April	-	Allegation: inadequate leak test of feedwater check valve.
May	-	Alleger went under vessel first time to perform LPRM connector replacements.
Next Day	-	Allegation: alleger assigned to other work based on his LPRM complaints. Alleger went to QC and described the problem.
June 6	-	Allegation: conversation with supervisor about being denied the weekend off.
June 16	-	Reactor startup begun. Startup stopped when three Intermediate Range Monitors (IRMs) would not respond.
June 17	- -	Allegation: alleger and work crew replaced connector on IRM 18 and cleaned connectors on IRMs 13 and 16 without proper paperwork. Allegation: reactor restart begun using questionable test records.
July 7	-	Plant shutdown for repair of CRD pumps, LPRMs, and feedwater check valve.
July 10	-	Allegation: alleger replaced two LPRM connectors using unapproved connectors which he had purchased.
July 11	- -	While the alleger was replacing LPRM connectors with unapproved connectors, the NRC resident inspector entered under the reactor vessel to review work. Alleger identified connector problems to NRC resident inspector. Licensee management notified of issue by NRC; connectors repaired.

July 14 - Alleger contacted NRC resident inspector with other concerns. NRC resident inspector forwarded issues to Region I and encouraged alleger to notify NMPC management of his concerns.

July 15 - Alleger met with Vice President - Nuclear Generation; NMPC commenced investigation.
- NRC Region I Allegation Panel met to document events concerning allegation 86-A-0080.

July 22 - Alleger gave sworn testimony in Region I.

July 31 - Statement transcript provided to alleger.

August 4-7 - Radiological Controls inspection onsite reviewed alleger's concern (Attachment 3).

August 11 - Licensee provided summary of allegations. NRC Region I requested meeting to discuss NMPC investigation.

August 15 - NMPC summary report of investigation sent.

August 18 - Allegation receipt letter provided to alleger with referral to the Department of Labor (DOL) for resolution of the supervisory harassment allegation.
- NMPC/NRC meeting at Region I to discuss NMPC investigation.

August 22 - Unit 1 shutdown resulting from CRD scram valves.

August 25-29 - Special NRC team inspection conducted at Unit 1.

August 31 - NMPC letter sent to NRC on allegation findings and corrective actions.

September 8-12 - Special NRC team inspection conducted at Unit 2 (Attachment 5).

September 10-12 & 15-19 - Special NRC team inspection conducted at Unit 1 (Attachment 4).

3. PURPOSE

An interdisciplinary special inspection team was selected to perform the inspection. The disciplines of the team members correlated directly with the technical concerns identified in the allegations. Disciplines represented on the team were operations, surveillance, local leak rate testing/in-service testing, quality control/ quality assurance, investigations, and instrumentation and control. The team leader was a senior manager (Deputy Director Division of Reactor Projects) with past Branch Chief and Section Chief responsibilities for NMP-1 and NMP-2, as well as Senior Resident Inspector experience. The Division Director of Reactor Projects was present during August 28-29 and the exit meeting.

The inspection focused on assessing the impact of the allegations upon the continued operation of Unit 1 and the potential licensing and operation of Unit 2. This was accomplished by reviewing selected parts of the allegations for validity, assessing the NMPC evaluation of the allegations, and assessing the NMPC determination of the impact of the allegations on site programs.

Other aspects associated with the allegations were pursued. To determine the thoroughness and accuracy of the NMPC investigation, an NRC investigator reviewed the work that the NMPC investigators had completed and assessed the independence that they had in pursuing the allegations. Also, a review of the operational quality assurance programs at Unit 1 and Unit 2 was performed to evaluate their ability to identify and correct problems within the plant staff's activities. Additionally, the inspection reviewed an NMPC evaluation, which was proceeding concurrently with the inspection, of an August 22, 1986 forced shutdown of Unit 1 due to improper CRD maintenance to assess NMPC's ability to effectively evaluate identified problems and establish corrective actions.

4. REVIEW OF ALLEGATIONS

This section is structured such that the review of each allegation provides the allegation(s) as written in the summary of allegations sent to the alleger and NMPC, a synopsis of the NMPC evaluation provided by the August 15, 1986 NMPC letter to the NRC, details and findings resulting from the inspection, an assessment of the technical significance and impact on nuclear safety, and conclusions based on the facts. The allegation conclusions are presented according to whether they were substantiated true as stated or unsubstantiated, including whether any part or all of the allegation was not borne out by the facts.

4.1 CRD Pump Vibration

Allegation:

"1. In March, 1986 after weeks of daily vibration tests of the CRD pump, testing was suspended when it was apparent that the increasing vibration would exceed the action limit of the ASME requirements and a plant shutdown would have been required prior to the scheduled March 8, 1986 shutdown."

NMPC Evaluation:

NMPC concluded that ASME Code and Technical Specification requirements were met and that vibration testing and corrective maintenance of the pump were appropriate. Specifically, CRD Pump No. 11 experienced vibration problems in January and was repaired (replaced bearings, bushings, and balancing disk) between January 17 and 21. The pump continued to have problems and was repaired again (replaced thrust bearings, installed new bearing oiler, and checked coupling) between February 8 and 10. After the repair the baseline data were revised on February 11 to reflect the repaired pump's condition. The vibration readings referred to were for information and troubleshooting purposes only, and when the pump was operating acceptably, the readings were ceased.

Review and Findings:

The inspector reviewed the NMPC evaluation of the allegation and found it to be accurate based on followup interviews with personnel in In-Service Test (IST), I&C, Maintenance, and Operations. NMPC did suspend its daily data collection of the vibration of CRD Pump No. 11 after February 11, but only after the pump was rebuilt and further testing showed the pump's vibrational data to be within the acceptable range. The inspector did note, based on his investigation, that the IST program met the requirements prescribed by Section XI of the ASME Boiler and Pressure Vessel Code and the Technical Specifications, but the information accumulated by the group was not being utilized by the various site organizations. It was also noted that data taken by I&C at the request of other groups were not supplied to the IST group. This is a potential problem in that the IST records may not have a complete and accurate history of component performance.

Technical Significance:

There are two CRD pumps, and the Technical Specification requires that if one CRD pump is inoperable, it be made operable within 7 days or the reactor must be shut down. During this period the second CRD pump was operable, and CRD Pump No. 11 was never out of service for 7 days. Further, as the allegation was unsubstantiated, there was no technical significance.

Conclusion:

Based on this investigation the allegation was found to be unsubstantiated. The licensee's summary report presented to the NRC was confirmed.

4.2 Helium Leak Testing

Allegation:

"2. In March, 1986, the chemistry supervisor noted that errors existed in the procedure for helium leak testing the stack gas system, in that portions of the system would not be tested. The alleger found the supervisor's conclusion to be correct. The I&C supervisor assigned the alleger to review the leak testing procedure and propose changes to it. After completing this work, the I&C supervisor sat on the proposed changes and later told the alleger to do the testing with the old procedure because there was no time to change the procedure prior to startup. The leak testing was done on April 1."

NMPC Evaluation:

NMPC concluded that the stack gas monitoring system was tested using a procedure with known deficiencies. The I&C Supervisor was aware of the leak test procedure deficiencies but elected to perform the testing, because modifications would have been required to the piping system to properly test it. It was unlikely that the modifications could have been done prior to completing the outage.

Review and Findings:

The technical concerns raised by the allegation were determined to be valid. The procedure used to conduct leak rate testing of the stack gas monitoring system was known to be inadequate, and the leak rate testing as accomplished was not a test of the entire system.

Discussions with the I&C Supervisor indicated that he intended to complete leak rate testing of the entire system after modifications necessary for the revised leak rate test procedure were complete.

The I&C supervisor appeared to have had an excessive workload, resulting in his inability to complete the necessary modifications prior to the end of the outage. However, the I&C supervisor took no action to make his superior aware of his excessive workload. Despite that, however, the I&C Supervisor's management was aware of the I&C Supervisor's excessive workload, nevertheless effective action to alleviate it was not taken.

There was no Quality Assurance/Quality Control involvement in the leak rate testing of the stack gas monitoring system.

Technical Significance:

No specific safety concern exists, in that there are no Technical Specifications or regulatory commitments associated with the surveillance, and a weekly bubble test of system components was performed.

Conclusions:

The allegation was substantiated.

Workload management has been addressed on the Instrument and Control technician level. A repeat problem resulting from excessive workload is unlikely to occur to I&C technicians due to subsequent staffing initiatives. However, workload management has not been addressed on the superintendent/supervisor level. Problems resulting from excessive supervisor workload could occur again at both units.

The issue of testing the stack gas monitoring system utilizing a procedure with known deficiencies is a further example of procedural deficiencies and inappropriate procedural adherence attitudes which have been tolerated by NMPC supervision.

4.3 Feedwater Check Valve - Leak Test

Allegation:

"3. The alleger was instructed to apply 100 psi air to seat the feedwater check valve after it had failed its initial test. It failed the second test also. Then the mechanic installing the replacement valve told the alleger the valve seat was hammered in place. The valve passed the leak test, but stuck shut during start-up."

NMPC Evaluation:

NMPC concluded that although the testing procedure did not allow it, the leak testing of the feedwater check valves was done by pressurizing the piping to 100 psi and then bleeding down to 35 psi for the actual testing.

Regarding the hammering, NMPC concluded that when an initial leak test of feedwater check valve 31-01 failed, the valve center section was replaced. During the subsequent leak test the tested portion of piping could not be pressurized and the valve flange (part of the exterior of the valve) was hammered to cause the internal valve disc to seat (i.e., to close). This hammering had no effect on the condition of the valve. The check valve then passed the leak test. Feedwater check valve 31-01 did stick open during plant startup, and appeared to stick open during the subsequent plant shutdown. Following this shutdown check valve 31-01 was disassembled, and the Teflon seat was missing. The previously removed center section was repaired and reinstalled into valve 31-01, and the valve had no further problems.

Review and Findings:

The inspector reviewed the Instrument Surveillance Procedure, Procedure No. N1-ISP-25.7, Feedwater Isolation Check Valves Leak Rate Tests, March 17, 1986 and held interviews with the I&C supervisor and technicians.

Based on the interview with the technicians, it was found to be common practice to perform a local leak rate test on the feedwater check valves in the following manner. Once the system is isolated, the inboard isolation valve, an AC motor operated valve, is opened to allow the head of water in the feedwater line, because of its configuration, to reverse flow and seat the feedwater check valve. The inboard isolation valve is then closed, and the volume between the two valves is pressurized to 100 psi. The purpose of this pressurization is to quickly drain the water within the volume and to assure the check valve remains seated. Once the water is drained from the volume, the pressure is reduced to 35.5 psig in the volume, and the test is performed.

The local leak rate test procedure specifies that the feedwater isolation valve is to be cycled and closed. The drain line between the inboard isolation valve and the outboard check valve is opened to drain the water. Once the line is drained, the test apparatus is connected and the cavity is pressurized to 35.5 psig and tested.

Concerning the valve hammering, results of the investigation showed that during the performance of a preliminary LLRT performed on the valve before it was installed into the system, the valve was leaking during the pressurization. The mechanic struck or hammered the valve flange, the valve seated, and the test was performed. After the check valve was removed from the system because of other problems, the valve internals were inspected by Quality Control on August 11, 1986, and no evidence of hammering on the disc was found. The details of that inspection are documented in NMPC QA Inspection Report QCIR 1-86-1271.

Technical Significance:

Based on the above method used to leak test check valve 31-01, the NRC was unable to ascertain the technical acceptability of the test. NMPC was requested to justify the validity of the test. This item is unresolved (50-220/86-17-02) pending receipt and review of NMPC's response. However, we note that there is a remote manual power operated valve in series with the check valve which is also subjected to local leak rate testing. This provides assurance that the feedwater penetration meets the leakage requirements of the Technical Specifications.

Conclusions:

The allegation relating to the use of 100 psi air was substantiated.

Technical Specifications 6.8.1 states, "Written procedures and administrative policies shall be established, implemented and maintained that meet or exceed the requirements and recommendations of Sections 5.1 and 5.3 of ANSI N18.7-1972 and Appendix "A" of the USAEC Regulatory Guide 1.33...." However, NMPC performed the local leak rate test for the feedwater check valves in a manner not in accordance with approved procedures. Failure to comply with Technical Specifications is an apparent violation (50-220/86-17-01).

The second part of the allegation in which the alleger states that the mechanic hammered the valve seat in place was not substantiated.

4.4 Feedwater Check Valve - Flow Diversion

Allegation:

"4. The Shift Supervisor diverted flow in the feedwater lines to free the stuck feedwater check valve. There appeared to be no procedure for this and no management review. Eventually, the valve opened."

NMPC Evaluation:

NMPC concluded that while the reactor was shut down on June 21 operator actions were taken to free stuck feedwater check valve 31-01. However, the actions were taken with the full knowledge and consent of management and were acceptable according to the Technical Specifications, the plant administrative controls, and operating procedures.

Review and Findings:

The inspector reviewed logs and records and interviewed personnel to substantiate the facts as presented by the alleger and by the NMPC evaluation. NRC review of the activities on June 21, 1986 to open check valve 31-01 essentially confirmed the information provided by the alleger, with the exception of the extent of NMPC management involvement in the process. Specifically, Operations personnel opened the stuck-closed feedwater check valve by cycling feedwater system valves MOV 31-08 and FCV 31-12B. The activity was conducted as "troubleshooting" and without special procedures. However, based on interviews with the applicable individuals, management review of the process did occur through the direct involvement of the Unit Superintendent and the Operations Superintendent, who were at the site and participated in the evaluation of corrective actions.

During this evaluation, the decision was made to shut down the reactor to reduce pressure downstream of the stuck-closed check valve (31-01) to allow investigation and repair of the valve. The operators also entered the Technical Specification 3.1.8 Limiting Condition for Operation (LCO), based on a loss of redundancy within the High Pressure Coolant Injection (HPCI) System (loss of one of the two injection paths). As part of the troubleshooting actions, the operators partially closed the motor-operated valve (MOV 31-08) in the remaining operable HPCI (feedwater) injection line. NRC review noted that prior consideration was given to the potential impact on HPCI operability and the action was taken only after it was concluded that a flow path capable of delivering the minimum 3800 gpm required for HPCI operability was assured. Since the valve was manually closed three turns, which corresponded to about 1 inch of the 12 inch full stroke travel for the valve, the minimum flow requirement was more than adequately met.

One item was identified during the review of the operations area that requires further review to assure an acceptable resolution. The item concerns the NMPC interpretation of the HPCI system description as provided in the FSAR and the Technical Specifications. The existing NMPC position is that redundancy within the HPCI system is restricted to the active components upstream of common piping headers within the feedwater system and thereby limited to the redundant condensate pumps, feedwater booster pumps and feedwater pumps. This results in the two feedwater lines downstream of the last stage of feedwater heaters being explicitly excluded from consideration as redundant flow paths, since either one is sized to deliver the required 3800 gpm flow rate for HPCI operability requirements.

The inspector questioned NMPC's conclusion and stated that the NRC staff position is that HPCI operability requires redundancy over the entire flow paths within the feedwater system. As an example, closure or failure of the containment isolation valves (31-01 and -02 or 31-07 and -08) downstream of the common header at the discharge of the feedwater pumps constitutes sufficient reason to enter the TS 3.1.8 action statement based on a loss of redundancy in the HPCI flow path. It was noted that NMPC took this approach during the incident on June 21, 1986.

It appears that the appropriateness of NMPC's interpretation depends on whether check valves in feedwater lines FW 11 and FW 12 are considered active components, and whether the single failure criterion should apply to their function. The events on June 21, 1986 would seem to indicate it is proper to treat the check valves as active components, and for the HPCI system to be "single failure proof", both feedwater lines should be fully operable to meet the Technical Specification 3.1.8 LCO for routine power operations.

Further review of this matter is required between the NRC and NMPC staffs regarding the plant conditions required to meet the requirements of TS 3.1.8. This item was discussed during the exit meeting on August 29, 1986, and NMPC was requested to submit a statement of its position in writing to NRC Region I to allow further staff review of the matter. This item is unresolved and will be tracked through a routine inspection report (50-220/86-17-03). NMPC agreed to take a conservative approach with regard to redundancy in the HPCI system flow path pending completion of the NRC review and resolution of the item.

Technical Significance

The inspector reviewed the effects of manipulating feedwater system valves to increase the differential pressure across check valve 31-01 by 200 psig and the potential impact on the plant for the operational condition at the time of the event. No unsafe conditions were identified, in that the actions taken were within the limits and controls established by station administrative procedures, operating procedures and the conditions of the facility license. The inspector noted that the actions by the crew on June 21, 1986 were less limiting than declaring both HPCI subsystems inoperable and continuing with a plant shutdown per the Technical Specification action statement. Such a course of action would have been allowed by the facility license and would have been considered within the authority of the shift supervisor's position to perform under the responsibility of his Senior Reactor Operator license.

Additional Review

Plant operations areas were reviewed as a followup to the allegation. The review included an inspection of shift activities during shutdown, startup and routine power operations. The focus of the review was to determine whether potential problems or deficiencies highlighted by the allegation were indicative of broader based concerns or isolated deficiencies in the operation area.

The inspector reviewed plant operating activities for Unit 1 and 2 to determine whether concerns raised by the alleger in other areas were also applicable to plant operations. The review focused primarily on the Unit 1 operating practices, but also included shift activities in the Unit 2 control room. This review noted that the operating procedures and practices used on Unit 1 are also employed to a large extent on Unit 2. The inspector noted, however, that there was a limited basis for comparing Unit 1 and Unit 2 operations due to the differences in plant operating modes at the time of the inspection.

Operating activities were conducted in accordance with an extensive number of controls established in the operating and administrative procedures. The conduct of operations is prescribed by detailed procedures which govern a multitude of operating activities, including record keeping requirements, switching and markup operations, installation of jumpers and lifted leads, operational surveillance testing, system and component operations, shift tours of operating equipment, and operations during shutdown, startup and power conditions. Based on discussions with plant operators and a review of a selected sample of procedures for markups, independent verification, jumper installation, system operations, repairs, surveillance testing, and startup operations, the inspector determined that operating procedures provide an adequate level of detail to direct the activity and do not contribute to an "informality" in plant operating activities.

Inspector observations of activities performed in the above areas determined that the procedures were followed or changed as necessary. It was notable that changes (or exceptions) to valve lineups prescribed by system operation procedures were processed as a temporary change to the applicable procedure. Other instances arose during the inspection where temporary procedure changes were processed to allow deviation from the instructions in the governing procedure; examples included the reactor vessel hydrostatic test procedure used to perform single rod scrams on August 19-21, 1986 and the changes to the reactor vessel drain line block valve lineup made on an August 25, 1986 temporary change to the drain line valve lineup. Based on the above examples, it appeared that supervisory and support groups become involved in the resolution of equipment issues.

In addition to the above, the inspector noted the following additional strengths in the plant operations area: (i) there was good interaction between supervisors and operators, and between operators and other groups during the conduct of routine operations and testing; (ii) staffing in the operations area appears to be adequate, and there was good control over the use of overtime; and, (iii) operator and nonlicensed training programs appear effective based on inspector interviews with personnel in positions from Station Shift Supervisor (SSS) to Auxiliary Operator B (AOB).

Conclusions:

This allegation was unsubstantiated in that although the specific operation took place, the concern relating to no procedure and no management review was unfounded. Based on the discussions noted above, the inspector determined that NMPC's followup reviews and actions for the specific allegation were appropriate and acceptable. The inspector concurred with NMPC's conclusion that the crew actions were within the scope of the authority and responsibility vested in the operator position and exercised as part of their individual licenses.

Based on this review, the inspection identified no findings which indicated that the concerns raised in other functional areas were applicable to either the Unit 1 or Unit 2 operating organizations. Additionally, due to the separate supervisory and operating shift staffs, the pending licensing and startup activities of Unit 2 should not significantly impact (or be impacted by) operation and management of Unit 1.

4.5 LPRMs

Allegations:

"5. During the outage non-qualified technicians installed LPRM connectors in that "A" techs installed them without direct supervision from "C" techs."

"6. During the outage and years prior, LPRM connectors were routinely installed without proper Work Request (WR) paperwork, connectors replacements were represented on WRs as troubleshooting, and the Installation and Test Procedure, LPRM-1, was routinely not used or filled out afterward."

"7. Since the cable replacement six years ago, the LPRM cables have not fit properly into the connectors. The cable dielectrics have been melted smaller (per LPRM-1) or the connector bores have been drilled larger to fit them together."

"9. On July 10 a different design connector was installed on some LPRMs (prior to being discovered by the resident inspector), and no design change had been submitted for it. In addition, no work requests or LPRM maintenance procedures were prepared until after the resident inspector came down to witness this activity at which time the workers involved took a break to generate the paperwork and get it approved by the shift supervisor."

Initial NRC Inspection:

On July 11, 1986 the resident inspector observed portions of safety-related maintenance on the Unit 1 Local Power Range Monitors (LPRM) connectors. The inspector found two Amphenol Type BNC crimp-on connectors used in place of the Amphenol Type SMA connectors required per procedure N1-IMP-LPRM-1. One of the two BNC connectors identified was installed in the cable supplying a signal to LPRM 28-09B. LPRM 28-09B is one of eight safety-related LPRMs which provide input to APRM channel 18. The inspector observed that no Quality Control personnel were present during the LPRM connector maintenance.

The inspector discussed the installation of the BNC connectors with the Lead QC Inspector and the I&C Supervisor. The I&C supervisor stated that he was aware that unapproved connectors were being installed contrary to the procedure controlling LPRM connector maintenance. The Lead QC Inspector stated that there was no QC coverage due to ALARA considerations.

NMPC Evaluation:

NMPC concluded the following:

-- "A" technicians worked only under the direction of "C" technicians and no technicians other than the alleger were aware of "A" technicians performing work beyond their qualifications.

-- Connectors were sometimes replaced when the WR only documented the work as cleaning.

-- Procedure LPRM-1 was not required when the connectors replaced were considered nonsafety-related, but the post-maintenance testing part of it was routinely performed. The copy of LPRM-1 was filled out after the work, because the area under the reactor vessel was highly contaminated. If the copy had been taken there, it would have been contaminated and required disposal.

-- In the early 1980s NMPC replaced the existing LPRM cable due to moisture and degraded shield concerns. There have been problems connecting the SMA connectors onto that cable ever since, because the new cable dielectric is larger in diameter.

-- Due to connector/cable match-up problems, the cable dielectrics were melted, which was approved in LPRM-1 and sanctioned by General Electric (GE), and the connectors were machined, which was not approved. Later evaluation concluded that the machining was technically acceptable.

-- The BNC type connectors installed on July 10 were an unapproved design. The I&C Supervisor intended that the new BNC connectors be installed on nonsafety-related LPRMs and allowed to function in a bypassed mode to ascertain their durability. Some of the BNC connectors were installed on safety-related LPRMs. A later evaluation determined that the BNC connectors were a technically acceptable replacement.

-- The control and accounting of the spare, uninstalled connectors were inadequate.

Review and Findings:

For the allegations associated with LPRMs, the NRC interview of I&C personnel indicated that "A" technicians (technicians with the lowest skill level) worked under the direction of "C" technicians (technicians with journeyman skills). No one interviewed was aware of any instances in which an "A" technician performed work without appropriate supervision. Based on the interviews with technicians and supervisors, work was performed based on individual skills and experience. Assignments were made on each individual's scope of training and experience, as documented in that individual's on-the-job training (OJT) file.

The requirements for documentation of the work and implementation of the LPRM-1 procedure were dependent on the activity performed, since not all LPRMs were considered safety-related, and QC involvement and procedural compliance were not a common practice for nonsafety-related installations. The inspector noted that NMPC had previously considered the safety-related LPRMs to be only those that were used in Average Power Range Monitor (APRM) circuits. Therefore, approximately one-half of the 120 LPRMs were considered nonsafety-related. Following the discovery of the unapproved connector design by the NRC on July 11, NMPC revised the maintenance of LPRMs, such that all LPRMs are now treated as safety-related.

Work Requests (WRs) for safety-related LPRMs (i.e., those in APRM averaging circuits) contained procedural deficiencies, in that the quality classification, procedural requirements, material control, and extent of maintenance task were not always specified.

Engineering and management awareness of, and involvement in, the ongoing LPRM cable/connector problem were not evident. I&C supervisors burdened with heavy work loads apparently relied on technicians to resolve the issue.

Methods used to complete the LPRM cable/connector assemblies included the melting down of the dielectric to fit the connector and the enlargement of the connector inner diameter by machining. The practice of melting the cable dielectric to fit the connector is a process approved by the General Electric (GE) Company and is sanctioned by NMP-1 procedure LPRM-1. However, the enlargement of the connector inner diameter by machining is not covered by any procedure. Although the action was subsequently evaluated as being technically acceptable, the connector should not have been reworked without the proper technical review and material controls to verify that modifications did not compromise system operability.

A review of Work Requests for work performed by I&C on other systems indicated that on Work Requests (WRs) for major safety-related tasks the WR package was well documented, containing the necessary QC hold points, procedural requirements and instructions for performing the task. On minor safety-related tasks, such as repair or replacement of a switch, the WR packages lacked definitive instructions and apparently relied on the skills and experience of the individual assigned to perform the work. QC was not generally involved, but there were procedural requirements for post-maintenance testing to check the function and operability of the component. QC surveillance was used as a means of assuring adequate quality. For nonsafety-related maintenance tasks no documentation (other than the WR) or QC involvement was required. The task was performed by the individuals assigned, that assignment being based on the skills and experience noted in each individual's on-the-job training (OJT) file and the personal knowledge of the supervisor.

Technical Significance

Post-maintenance testing of the LPRM circuit was a general practice and was performed in accordance with sections of the LPRM-1 procedure. In addition, subsequent calibration after startup substantiates the adequacy or failure of LPRM circuits. Failed LPRMs are bypassed in accordance with the Technical Specifications. There is no safety concern, since the APRM failure mode is upscale for scram and downscale for inoperable, both of which are fail-safe failure modes.

Conclusions:

These allegations were substantiated, in that for the allegations associated with the LPRMs there was an apparent programmatic deficiency in controlling the materials, procedural compliance and QC involvement to ensure quality.

First line supervision's knowledge and participation in the ongoing LPRM problem was evident. In reviewing I&C performance in other areas, it appeared that the deficiencies noted in the allegation were limited to the LPRM and IRM (discussed below) issues.

Technical Specification 6.8.1 requires that procedures be established, implemented and maintained that meet or exceed the requirements of Sections 5.1 and 5.3 of ANSI N18.7-1972, which requires procedures governing plant maintenance. NMP-1 procedure N1-IMP-LPRM-1 requires the use of Amphenol Type SMA connectors during LPRM connector maintenance. Contrary to the above, two Amphenol Type BNC connectors were installed in place of the connectors required by procedure. This is an apparent violation. (50-220/86-17-04).

4.6 QC Involvement

Allegation:

"8. QC involvement in the LPRM connector work was improper in that I&C techs frequently did not inform QC that connectors were being replaced, and even when aware of the connector replacements, QC inspected only paper and never went under the vessel because they knew the work was unacceptable to specifications."

NMPC Evaluation:

NMPC concluded that no QC hold points for inspection of the connectors existed in the procedures. The intended method for assuring the quality of this work was surveillance by the QA Surveillance Group. Inspections were minimized due to ALARA (As Low As Reasonably Achievable) considerations of inspector exposure, most LPRMs were classified as nonsafety-related, and post-maintenance testing was sufficiently verified by Level 2 qualified people.

Review and Findings:

A review of records, and discussions and interviews with personnel indicated that although inspection under the reactor vessel was not a common practice, as concluded by NMPC above, QC had previously conducted physical examinations and observations of LPRM connector work during previous outages between 1984 and 1986. The Unit 1 Quality Control Inspection Reports (QCIRs) associated with LPRM connector work during the past two years were reviewed.

Conclusions:

The claim that QC reviewed only "paper" and "never went under the vessel" was not substantiated.

4.7 Harassment

Allegation:

"10. During the outage the alleger was harassed by fellow workers and discriminated against by his supervision due to his raising concerns about the LPRM connector work. The supervisors did little or nothing to correct his harassment."

Conclusion:

The inspection concluded that it was not an appropriate time to inspect this allegation. This allegation was being investigated by the NMPC special investigation discussed in Section 5. NRC investigation of this allegation, as appropriate, will be done following review of the final NMPC investigation report and Department of Labor action.

4.8 IRMs

Allegation:

"11. The connector on IRM 18 was replaced on June 17, 1986, and was not documented on the WR."

"12. The plant was started up on the morning of June 17, 1986 based on falsified surveillance test records for the replaced IRM connector. The I&C techs and assistant supervisor falsified the test record without performing any of the required surveillance testing."

NMPC Evaluation:

On June 17, work was performed on IRMs 13, 16, and 18 under WR 015772. The WR documented only cleaning of the connectors. The individuals other than the alleger stated that they were unaware of a connector replacement. However, the Radiation Work Permit (RWP) indicated that the IRM 18 connector was replaced. Further, since the alleger claimed to have replaced the connector himself, NMPC could not conclude that the connector was not replaced.

On the testing, NMPC found that WR 015772 indicated that post-maintenance testing should be performed under procedure NI-ISP-NEU-2. However, there was no procedural requirement to perform any testing following connector cleaning, nor was there any specific procedure covering testing following connector replacement. Common practice involved circuit tests, including Time Domain Reflectometer (TDR) traces, for information. Record of the traces could not be found, but review of the process computer showed that IRM 18 was bypassed at 2:59 a.m. and was returned to unbypassed at 3:11 a.m., the approximate time needed for the TDR trace. Based on this NMPC concluded that TDR traces were done.

Review and Findings:

As the problem of undocumented work on LPRM connectors (covered in Section 4.5) was already under review, the IRM aspect of this issue was not pursued during the inspection beyond a review of the applicable paperwork.

Concerning the testing, the inspector reviewed the documents referenced in the NMPC evaluation and found no inconsistencies. It was determined that further review would be appropriate following completion of the NMPC investigation and the NRC review of its conclusions.

Technical Significance

The IRMs have a fail-safe design and will trip and result in a reactor scram if a failure causes an inoperative or upscale reading. Further, a rod block results if a downscale reading occurs. As the IRM calibrations required by Technical Specifications were performed during the week prior to the alleged event and following the IRM detector replacements which occurred later on June 17, this allegation has minor technical significance.

Conclusions:

The inspector concluded that the conclusions regarding the unauthorized/undocumented replacement of LPRMs in Section 4.5 also applied to IRMs. Further, the alleged falsified testing of the IRMs will be reviewed when the NMPC investigation is completed.

4.9 Unplanned Exposure

Allegation:

"13. An I&C technician working on an LPRM connector received a dose of 1.25 rem which was in excess of his administrative limit.

Conclusion:

This allegation had been previously reviewed during a radiological controls inspection during August 4-7, 1986 and is documented in Attachment 3 - Combined Inspection Nos. 50-220/86-16; 50-410/86-46 dated September 30, 1986. The findings of the inspection will be discussed as part of the enforcement conference covering the allegation review.

4.10 Tool in Reactor Vessel

"14. A piece of an aluminum tool about 1 inch by 8 inches was lost in the reactor vessel during the outage. The tool was used for installation and removal of feedwater line plugs."

NMPC Evaluation:

NMPC had previously concluded that a six inch piece of a tool used to install the emergency condenser line plug was lost during the outage and performed an evaluation since the piece was not retrieved prior to start-up from the outage. General Electric Report MDE 720586 dated May 21, 1986 reviewed the event and concluded that the piece would be oxidized and disintegrate. The piece was judged to present no potential for chemical reaction, flow blockage, or interference with control rod motion, and safe reactor operation would not be compromised by it. The Site Operations Review Committee (SORC) reviewed the report on June 13, 1986.

Conclusion:

The inspector reviewed the NMPC evaluation and concluded that this event would be more appropriately reviewed in a routine inspection report as the event had no direct connection with the alleger, appeared largely unrelated to the other allegations and was the subject of a previous engineering evaluation. This event will be tracked as (50-220/86-17-05).

5. QA PROGRAM REVIEW

Due to the specific allegation concerning QC involvement in LPRM work and the apparent lack of QA/QC involvement in the other allegations, the inspection team concluded that a general review of the quality assurance program was appropriate.

An onsite (Units 1 and 2) Manager-Nuclear QA Operations and his QA/QC organization report to the offsite Vice President-Quality Assurance (VP-QA). Also, an onsite QA Audit group reports to an offsite supervisor who reports to the VP-QA. The following comprise the onsite QA/QC presence:

-- A Supervisor-Quality Control (QC) with a separate subgroup of inspectors assigned to each unit.

-- A separate Supervisor-Quality Engineering with a group of QA Engineers assigned to each unit.

The QC groups are responsible for first level independent inspection of work associated with safety-related and other Q list components/systems. Until recently Unit 1 QC also performed a surveillance function of activities in a high radiation area such as LPRM repair and replacement. Currently, a Quality Control Inspection Report (QCIR) is developed for each procedure or specified activity. This QCIR includes scope of work information, inspection attributes to be observed or reviewed and space for documenting results. A similar checklist had been used for the previous QC surveillances. A QCIR is used each time an inspection is conducted, and this is normally in conjunction with a Work Request (WR), which is generated for every work activity, including troubleshooting and tasks considered to be within the expected skills of the mechanic or technician. In addition to the QCIRs reviewed on LPRM work, the inspector reviewed a sample of QCIRs from other types of Unit 1 inspected activities. Those QCIR attributes that are asterisked on the QCIR form must be addressed by the inspector, and should time be limited because of workload or other considerations, the remainder need not be done. Interviews and discussions were held with the Unit 1 QC Supervisor and cognizant inspectors about inspection scheduling and methodology. The following aspects of QC overview were identified based on the foregoing evaluation:

-- A WR issued for troubleshooting or for work within the expected skills of the worker is designated as "QC not required" but is annotated that notification must be made to QC if repair/replacement of an item is decided upon.

-- The balance of safety-related or Q categorized WRs have some level of inspection done on the work.

- Using the same checklist for a given inspection one person may observe ongoing work and clearly document this fact, while a second person would do the same type of inspection and paraphrase the inspection attribute(s) as documentation.

- A third person would use the same checklist for the inspection as above and do only a record review documenting this fact clearly, while a fourth person would do the same document review and paraphrase the inspection attribute(s).

- The prevalent method of documenting inspections was paraphrasing the inspection checklist attribute(s), and this did not clearly state whether examinations/observations were done or only records were reviewed when the attribute was to be "verified".

- Unasterisked attributes (optional) were addressed in the majority of QCIRs reviewed.

The Unit 1 QA Surveillance Group is responsible for conducting a second level monitoring effort of ongoing activities associated with functional areas such as chemistry, fire protection, maintenance, operations, and radiation protection. Technical Specification (TS) required plant surveillances are also monitored and a schedule has been developed that matches TS line items to applicable calibrations and tests so that each line item will be addressed at least once during a two year cycle. These QA surveillances are done using checklists similar to those of QC inspections. Discussions and interviews with the cognizant supervisor and three group members indicated that surveillance methodology and interpretation of the word "verify" was almost identical to that of the QC group. A review of QA Surveillance Reports identified the same lack of clarity in documenting what was done as in the Unit 1 QCIRs.

The Unit 2 Program was reviewed. The Unit 2 QA Surveillance Supervisor was interviewed, and discussions included details of how the groups responsibility would be implemented. It was determined that little similarity existed between the two QA surveillance groups' monitoring efforts. The following were some of the major aspects of the Unit 2 program.

- A methodology and training guide manual for the conduct of QA surveillance was developed.

- The various amounts of surveillance of a given function were based on a Probability Risk Assessment (PRA) type of analysis.

- The number of observations vs the number of identified deficiencies allowable in a given functional area are tracked so as to maintain a 95% confidence level of acceptable performance in a given functional area.

-- Additional surveillances would be conducted in an area where the confidence level fell below the established value.

-- Approximately 80% of the anticipated checklists have been developed using a survey methodology with some already being used for ongoing activities so as to determine where revisions are needed.

-- The schedule is based on the 18 month refueling cycle, and notification of an impending QA surveillance is planned to be given just prior to its commencement.

Several QCIR checklists developed for use at Unit 2 were reviewed and discussed with the cognizant QC Supervisor. The checklists were task oriented, used the word "verify" sparingly, and had acceptance criteria noted thereon or referenced the appropriate procedure paragraph. It was noted that a number of guidelines had been developed for specific inspections such as cable terminations.

The onsite audit group has been responsible for auditing only Unit 2 activities prior to this year. Discussions with the supervisor of this group indicate that management's intent is for the onsite group to assume most, if not all, of the onsite audit responsibilities. However, the final balance between offsite and onsite audit responsibilities has not yet been finalized. Audits, by nature, are primarily a review of programs, procedures, records, and other documents, and a review of Unit 1 audit packages (e.g. checklists, field notes, corrective action requests) from the corporate audit group reflected this approach. The audit packages for this year's three Unit 1 audits that were conducted by the onsite audit group documented a greater degree of work observation, physical examinations, measurements, etc. than the others. A review of a few Unit 2 audit packages indicated emphasis on this approach to auditing and when observations etc. were done, and that fact was clearly documented.

The Unit 1 QA Engineering group has been reviewing WRs prior to any work being accomplished and developing inspection checklists based on approved procedures. Discussions with the supervisor of the Unit 2 group indicated that the development of their checklists will include a degree of source document review so as to assure specifications, vendor technical manual, etc. requirements and recommendations are indeed reflected in those procedures.

Conclusions:

The effectiveness of the QA/QC organization in identifying the type of practices contained in the allegations is doubtful based on the following assessment.

- -- Should QC not be notified that a repair or replacement will be done under a "troubleshooting" or "worker skills" WR, any unauthorized or out-of-scope work would not be identified.
- -- Should a QC inspector only review records, unauthorized, improper, or out-of-scope work would not be identified.
- -- A QA surveillance that consisted of only record reviews would have no probability of identifying unauthorized, improperly conducted, or out-of-scope work.
- -- Audits, by their nature, have a low probability of identifying unauthorized, improper or out-of-scope work.
- -- The leading root cause of differences in the conduct of QC inspections and QA surveillances is the manner in which the word "verify" is used in a checklist attribute.
- -- Of the three levels of QA/QC overview only QA surveillances that emphasize unanticipated examination or observation of ongoing work have a high probability of identifying unauthorized, improper or out-of-scope work.

In summary, although the QA/QC program is being implemented, it is not being utilized in a manner that permits it to be an effective management tool to find and correct problems, of the type disclosed during our reviews of the subject allegations.

6. REVIEW OF NMPC INVESTIGATION

Review and Findings:

This section details a review of the "Summary Report of Niagara Mohawk Power Corporation's Investigation of Allegations by NMP-1 Instrument and Control Technician" by a NRC Region I Investigator.

Following notification of NMPC by the alleger on July 15, 1986, NMPC conducted interviews with the individual to document his concerns and were notified by Region I on August 11, 1986 of allegations received by the NRC. At the time of the special team inspection on August 25-29, 1986 the NMPC investigation remained in progress.

This review was based on interviews of the lead Investigator, a NMPC Assistant Security Inspector, and his assistant, a NMPC Security Investigator, relating to the conclusions and basis for those conclusions, as set forth in both the captioned report and confidential investigation relating to the same subject matter.

The exhibits relating to the reports were voluminous, and only a select few were reviewed in depth.

Conclusions

Both investigators appeared to be experienced, competent, and credible; however, this is their first experience at a complex regulatory investigation.

Conclusions appeared to be consistent with the investigation; however, it was readily apparent the investigation was incomplete and numerous logical leads needed to be followed-up. The investigators acknowledged this fact and emphasized that their investigation was ongoing.

The investigation appeared to be focused entirely on proving or disproving the allegations identified by the alleger on a technical basis. Certainly this needs to be addressed, but more attention should be given to the scope, responsible individuals, and circumstances which allowed existing conditions, e.g., corrective action for falsification of LPRM work requests was addressed, but investigation has revealed similar allegations in the I&C Department in other areas indicating a larger possible programmatic problem.

A lot of work has been completed in a short time, and a review of interviews indicated that the investigators have not had sufficient time to correlate the information obtained in the various interviews. Consequently, individuals were being interviewed two and three times on the same subject matter.

Investigators need more technical support in order to identify, provide, and explain site documents and records in support of the investigative effort. For example:

1. Security computer and RWP records should be compared to LPRM work requests in order to prove or disprove the allegation that unqualified technicians were changing LPRMs under the reactor vessel;
2. LPRM work requests which state "inspect and cleaned" should be compared to I&C Department log entries which indicate "connector changed";
3. SORC minutes and possible other management and supervisory notes from routine department meetings should be identified and reviewed to determine if there was any management concern on decisions relating to the alleged CRD pump vibration problem.

Interviews need to be more probing and interviewees need to be challenged to assure that they fully answer the questions.

The allegations relating to various LPRM problems should be reviewed for management involvement since both the QC Supervisor and I&C Supervisor have testified to NMPC investigators that they have been aware for years that there have been problems mating the LPRM connectors with the cables under the reactor vessel. Additionally, the I&C Supervisor, who was a former I&C Technician, admitted that he knew LPRM-1 was being violated during the installation of LPRMs.

Conclusions:

The investigators appeared to be independent of any management influence relating to both their investigative activity and conclusions. Given sufficient time and resources, the investigation should be capable of determining the facts of the allegations.

The NRC will review the final report upon completion of NMPC's activities (50-220/86-17-06).

7. REVIEW OF CRD VALVE MAINTENANCE EVENT

7.1 Event

This maintenance activity was selected for further inspection by the NRC as a measure of NMPC's ability to: respond to an event; investigate and identify root causes; institute appropriate corrective action; and effectively and critically self-evaluate existing programs. Conclusions reached regarding the above are described later. On September 19, 1986 NMPC reported the circumstances of the Unit 1 shutdown required per Technical Specifications in LER 86-26.

An unusual event was declared at Nine Mile Point site at 1:00 p.m. on August 22, 1986, and an orderly shutdown of the Unit 1 reactor from 99.5% power (1841 MWt) was begun. The shutdown was initiated because of the indeterminate operability of, at that time, ten control rods. The control rods in question had experienced inadequately controlled corrective maintenance during the previous 27 hours, in that the packing had been tightened on the hydraulic control unit (HCU) scram inlet valves without the approval of licensed shift supervision and also without appropriate post-maintenance testing. NMPC commenced an investigation of the work performed on the ten scram inlet valves in question on the afternoon of August 22 in parallel with the unit shut down. NRC Region I was informed of this situation by phone at that time. However, later that day NMPC's investigation found that the corrective maintenance had been performed on all 129 control rod drive (CRD) HCUs on both the scram inlet and outlet valves, thereby potentially affecting the scram insertion times of all control rods. The reactor was placed in a shutdown condition with all control rods inserted by 7:28 p.m. on August 22.

The performance of work on the HCUs which resulted in the reactor shutdown on August 22 was potentially in violation of Technical Specification Limiting Conditions for Operation (LCO) for the control rod drive system. Specifically, the Action Statement for LCO 3.1.1.C requires the reactor to be placed in a hot shutdown condition within 10 hours of exceeding the maximum and average control rod scram insertion times specified therein. The maintenance repairs to the scram inlet and outlet valves (hereafter referred to as the CRD No. 126 and 127 valves, respectively) were performed on all HCUs between 10:15 a.m. and 2:00 p.m. on August 21.

The operability of all 129 control rods became (at that point) unknown, and the Technical Specifications therefore required the reactor to be placed in the hot shutdown condition. The indeterminate HCU maintenance existed for approximately 24 hours until discovery by a Station Shift Supervisor at 10:30 a.m. on August 22. Because the reactor was brought to a hot shutdown condition approximately nine hours after the discovery of the HCU maintenance by plant management, and because the 126 and 127 valve packing adjustments were later determined to have no measurable effect on control rod scram insertion times (as discussed in Detail 4.1), no violation of Technical Specifications occurred. However, a violation associated with administrative controls applied to maintenance work was identified and is discussed later.

NMPC's investigation of the work performed on the CRD hydraulic control units was discussed in a special meeting of the Site Operations Review Committee (SORC) held onsite on August 23. The SORC reviewed a memorandum from the Site Superintendent (SP) of Maintenance who conducted the investigation that described the sequence of events associated with the work. The SORC also reviewed revisions made to the administrative procedure governing corrective maintenance repairs as a short term corrective action required prior to startup of Unit 1. A startup was begun on August 24, and all 129 control rods were tested and met their required scram insertion time intervals as specified in the Technical Specifications. Power ascension was continued, and the reactor reached full power by August 26, 1986.

The following sequence of events was obtained from document reviews and interviews conducted by the inspector and, in some cases, add to or differ from NMPC's investigation of the actions summarized in the August 23, 1986 memorandum (K. Dahlberg to T. Perkins). The HCU scram inlet and outlet valves are referred to as the CRD No. 126 and 127 valve, respectively. The work request (WR) under which the maintenance was performed was WR No. 102775.

DATE/TIME	COMMENTS
Friday, August 15	Quality Control (QC) Inspector discovered loose packing nuts on the CRD No. 126 valves of 10 HCUs.
	Work Request No. 102775 was initiated by a QC inspector and approved for work by the Assistant Maintenance Supervisor.
Monday, August 18	The WR was received and approved by the Maintenance Supervisor who specified that no procedure was required to tighten the packing nuts.
Tuesday, August 19	Quality Assurance (QA) review of the WR noted that inspection would be required.
Thursday, August 21	
7:30 a.m.	The WR was assigned to the Chief Mechanic and a working crew of three.

7:45 a.m.	A Radiation Work Permit RWP request was submitted for "CRD No. 126 inlet scram valves (various) packing leaks."
8:00 a.m.	QC was notified of work.
9:30 - 10:00 a.m.	RWP approved by Radiation Protection, Lead Worker and Assistant Shift Superintendent (also the Shift Technical Advisor (STA).
10:15 - 11:45 a.m.	Work crew (three mechanics and Chief) logged in and out onto the RWP. The workers tightened the packing on scram inlet and outlet valves (CRD No. 126 and No. 127) as well as the packing on the accumulator charging supply and drain valves (CRD No. 106 and No. 107) of all 129 HCUs.
1:00 - 1:30	QC inspector observed bolts already tightened on 9 HCUs specified on WR No. 102775, and discussed options to replace missing nut (one of four) on HCU 14-47.
3:00 - 3:30 p.m.	Chief Mechanic discussed mark-up (i.e., tag-out) of CRD No. 126 valve with shift supervision so that a replacement nut could be installed. Shift supervision was not aware of the extent of repairs made at this time and decided to postpone proposed nut replacement on HCU 14-47 until the next day.
Friday, August 22	
7:30 - 9:00 a.m.	Discussion between shift supervision, QC and maintenance personnel on how to replace missing CRD No. 126 valve packing gland flange stud nut on HCU 14-47. Operations decided that a mark-up was not feasible at that time, because of difficulties associated with the resulting inoperability of control rod 14-47. A consensus was reached to replace the nut without a mark-up. Otherwise it would be necessary to open the 127 valve or disassemble its split stem coupling.
9:20 - 9:25 a.m.	RWP approved to replace missing nut. The task description on the RWP stated "take up on scram inlet valve No. 126 packing... Reactor Building el. 237 accumulator area".

10:30 - 10:45 a.m.	Nut replaced on CRD No. 126 valve of HCU 14-47 which necessitated the filing off of a small section/edge of stem coupling.
	The Station Shift Supervisor went to the work site (at HCUs) to observe nut replacement and discuss job with Chief Mechanic. The Station Shift Supervisor discovered that the packing had been tightened on ten specific scram inlet valves.
11 a.m. - 12 noon	Extent of packing adjustments and effect on control rod operability discussed between Assistant Superintendent of Operations and shift supervision.
1:00 p.m.	Unusual Event declared based on initiation of plant shutdown required by Technical Specification Action Statement for control rod operability.
1:30 - 1:35 p.m.	QC inspection of replacement nut.
2:00 - 8:00 p.m.	Licensee investigative meetings.
7:28 p.m.	All Unit 1 control rods fully inserted.
Saturday, August 23	
12:30 - 2:45 p.m.	Special SORC meeting to review investigation results and subsequent plant startup.
Sunday, August 24	Control rod scram insertion time testing conducted in accordance with Procedure No. N1-ST-R1 for all 129 control rods and completed satisfactorily.

7.2 Review and Findings

Discovery of Loose Nuts

The inspector interviewed the QC inspector who discovered the loose packing gland flange nuts on nine HCU scram inlet (CRD #126) valves as well as a missing nut on one of the four studs on the HCU 14-47 scram inlet valve. The QC inspector had observed a similar situation on one HCU approximately one year ago. While waiting to inspect an unrelated filter replacement on August 15, 1986 the QC inspector visually inspected the scram inlet and outlet valves for all 129 HCUs and identified the HCUs with loose or missing nuts. The loose nuts were visually detected (i.e., the QC inspector did not touch the nuts to ascertain tightness), were backed off of the gland flange by a few threads (no more than one-eighth inch), and typically were only one of the four nuts on each scram inlet valve.

The QC inspector noted the ten affected HCUs, informed control room supervision of the condition, and because licensed operators were busy at that time, originated Work Request (WR) No. 102775. The QC inspector stated that there was no evidence of packing leaks on the ten valves identified. The responsible work group, Mechanical Maintenance, was then contacted by the QC Inspector, and tne WR was approved.

Maintenance Approval of Work

The approved WR No. 102775 was received and reviewed by the Supervisor of Mechanical Maintenance on August 18. Since the supervisor considered the tightening of the nuts (and therefore the packing) to be within the normal ability of a journeyman mechanic, a written procedure to perform the work was determined to be not required. The inspector interviewed the Mechanical Maintenance Supervisor and confirmed that, while he had also not specified post-maintenance testing at that point, he was aware of the impact on CRD No. 126 valve stroke time and consequent control rod operability as a result of tightening the valve packing. However, he failed to note those considerations on the WR or to discuss the feasibility of this work with Operations personnel. Further, he did not investigate the need to perform this work and was unaware that there were no actual packing leaks.

QA Review

A Quality Assurance review of the proposed work under WR No. 102775 was conducted, as required by Administrative Procedures AP-5.0 for repair, and QC inspection was indicated as being required for this job. However, since there was no applicable procedure to perform this work and no prepared QC inspection criteria existed, there were no acceptance criteria or inspection and quality requirements specified by the QA reviewer. More pointedly, it was unclear whether the scope of the job was intended for QC observation of work in-progress or after the fact QC inspection of the completed work. In fact, as described later, the post-work QC inspection that was performed failed to identify the lack of Shift Supervision approval and the maintenance that occurred beyond the approved work scope.

Work Crew Experience

Because of the apparent simplicity of the job and a failure on the part of first-line maintenance supervision to recognize the potential effect of packing adjustment on valve stroke time and control rod operability, the work under WR No. 102775 was assigned on August 21 with no additional direction or special instructions other than mentioned above. The work was assigned to a crew of three workers under the direction of a Chief Mechanic. The assigned Chief was a journeyman mechanic with significant experience of approximately 35 years with the company, over ten of which have been at the Nine Mile Point site, and the last 2-3 years as a working foreman or Chief Mechanic. The Assistant Supervisor who assigned the work on August 21 also has had extensive experience with NMPC of over

19 years, working as a Chief Mechanic for 3 years and as an Assistant Supervisor for the past 2 years. The remaining work crew consisted of two less experienced "B" level mechanics and a helper.

Supervisory Direction

The inspector interviewed the Chief Mechanic who performed the work under WR No. 102775. The Chief stated that he was not aware of the significance of tightening the packing on the scram inlet and outlet valves, nor was he knowledgeable of the function of the valves and their effect upon control rod drive scram insertion capability. The Chief was cognizant of the safety-related classification of the work, but was generally unaware of the function of the HCUs. The Chief stated that, upon assignment of the WR (to tighten packing on the ten identified valves), he was verbally instructed by the Assistant Supervisor to tighten any other loose nuts found. No specific criteria for tightness were provided to the workers, either verbally or in writing, as to either hand-tightness or a specified torque value. As described later the General Electric Operating and Maintenance Manual for the HCUs was not consulted at this point, and no effort was made to inspect or examine the CRD No. 126 valves prior to performing the work.

The inspector could not corroborate the Chief Mechanic's statement that he had been directed to tighten loose nuts on all HCUs (other than just the ten scram inlet valves identified on the WR).

Notification of Shift Supervision

Section 5.7 of AP-5.0, the Administrative Procedure for Repair, required notification of Shift Supervision prior to commencing work on WR No. 102775. Because no procedure was being used and no mark-up (equipment tagout) was deemed required, the normal interfaces with control room licensed operators did not occur, whereby a notification would otherwise be made. This left the RWP as the only other means of control room operator notification. Notification of work via an RWP is not the method intended by AP-5.0, nor is it an appropriate method as evidenced by the failure to clearly convey to the Shift Supervisor the extent of the work under WR No. 102775. Nonetheless, interviews with the Chief Mechanic and his immediate supervision indicated that they had considered the RWP approval by the SSS (or in this case his assistant) to constitute appropriate notification and had in fact filled in (after the fact) line 26 on WR No. 102775 as providing for such.

The failure to clearly notify Shift Supervision of the intent and scope of work under WR No. 102775 was a primary cause leading to the failure to recognize the potential effect of scram valve packing adjustment on control rod operability.

Initial Packing Adjustments

Interviews with the Chief Mechanic found that, in addition to the ten valves specified on the WR, an unspecified number of scram inlet and outlet valves (CRD No. 126 and 127) were tightened by the work crew on August 21. The Chief stated that a crescent wrench was used to "snug-up" the loose nuts; therefore, more than hand-tightening but an indeterminate amount of torque was applied. Additionally, the CRD No. 106 and No. 107 valves were tightened. These are manual valves associated with the HCU accumulator charging fill and drain connections and do not directly affect control rod operability. The Chief was not aware of how loose the identified packing gland flange nuts were prior to tightening, but subsequent discussions held by NMPC with the work crew members involved confirmed that, typically, one of the four nuts on the CRD No. 126 valves were backed off of the flange by a few threads. Also, as stated by the QC inspector who discovered the loose nuts, there was no packing leakage observed by the work crew at the HCUs.

Packing Leakage

The inspector evaluated the potential significance and sources of packing leakage from the scram valves. Packing leakage from the CRD No. 126 valve stem would be CRD system drive cooling water at a pressure higher than reactor pressure and originating from the condensate storage tank via the drive under piston area. Packing leakage from the CRD No. 127 valve stem would be standing water at static pressure and originating from the scram discharge volume header. The scram inlet and outlet valves on each HCU are located such that, due to the radiation fields present (which were 10-18 mRem/hr at the time of the inspection), an RWP is required to either visually inspect or work on the valves. However, there was no packing leakage apparent during the period of August 15-22, 1986. Moreover, the inspector observed no visible evidence of previous packing leakage at any HCU scram inlet or outlet valve, except for one HCU.

The CRD No. 126 valve on HCU 14-47 was also the valve that had one of four packing flange nuts missing. The inspector examined the stem to body area of that valve and noted discoloration and rust indicative of a previous packing leak. The inspector reviewed the history of previous work performed on HCU 14-47 but could not identify any instances where the scram inlet valve would have been disassembled (and a nut therefore misplaced) nor any instance where a packing leak was identified and corrected.

Replacement of Missing Nut

Following the tightening of packing on the HCUs on August 21, the Chief Mechanic had discussions with the control room shift supervision on how to replace the missing nut on HCU 14-47 since, with the valve closed, the stem coupling presented a slight interference to installing a new nut. At this time, the Shift Supervisor was unaware that the mechanics had worked on tightening the packing on other HCU valves and had informed the Chief that a "mark-up" (i.e., equipment tag-out) would be required to disassemble the valve to move the coupling up and away from the packing gland flange studs. The mark-up would necessitate rendering the associated 14-47 control rod inoperable and would require an evaluation by a Reactor Analyst. In an interview conducted by the inspector, the Station Shift Supervisor (SSS) stated that at that point he had not seen WR No. 102775 and his discussion with the Chief concerned how to install the missing nut. The SSS requested the Chief to return the following morning to obtain appropriate staff reviews.

Early on the morning of August 22, the Chief again presented various options to the SSS to replace the missing nut. These options consisted of: a "markup" to tag-out the valve and disassemble or move its stem coupling; shaving the nut or filing the coupling to provide for necessary clearance; or, cutting off a segment of the stud. The SSS declined to provide a mark-up because he did not desire to make the control rod inoperable. The Chief returned to discuss these options with maintenance supervision and with the QC inspector. The eventual solution was to shave a corner section off of the coupling and add the fourth nut.

Discovery of Work Scope

During the time the addition of the nut on HCU 14-47 was accomplished (1030-1045 a.m.), the SSS became curious as to this job and went to the HCU area to observe and discuss the work with the Chief. At that point, the SSS became aware of the tightening of the ten HCUs described on WR No. 102775, and he informed Operations Department supervision. The SSS and Operations management recognized the potential effect of the packing adjustments on control rod insertion time and operability, which resulted in NMPC's decision to shut down the reactor. The recognition by Operations was based, in part, on Standing Order No. 36 issued in December 1985 that identified a listing of ASME valves whose stroke times would be important and potentially affected by maintenance such as packing adjustments. Standing Order No. 36 was addressed to Operations personnel but had not been provided to other Station personnel such as QC or maintenance.

QC Inspection

The QC inspector assigned to cover WR No. 102775 observed a limited portion of the work performed on August 21. Interviews with the inspector and review of the associated RWP found that the QC inspector observed approximately 30 minutes of work under WR No. 102775 (at the end of the job) and that he concentrated on the ten HCUs identified in the WR to verify that the loose scram inlet valve nuts were tightened.

The QC inspector became involved in the procurement of a properly qualified replacement nut and participated in discussions with the mechanics as to how to replace the nut. At one point, the QC inspector consulted GE Vendor Manual GEI-92807A for the proper nut size, but he did not take note of written instructions in the Manual regarding assembly of the packing gland flange, nor did he note the specified tightening criteria for the nuts.

Therefore, although tightening of loose nuts and packing is a relatively simple evolution, the QA review of the work scope and limited QC coverage of WR No. 102775 were ineffective in identifying the following:

-- The breakdown in work control on the job by working beyond the approved scope of WR No. 102775.

-- The potential effects of tightening packing on the CRD scram inlet and outlet valves including the lack of specified post-maintenance testing.

-- The lack of proper notification of licensed control room operators.

The inspector reviewed the QC Inspection Report (QCIR 86-1287) that documented the retightening of packing nuts on the valves identified in WR No. 102775. The QCIR listed attributes that were to be verified by the actual inspection. However, while the first QC inspection attribute was planned to verify that the nuts were tightened properly, the attributes that followed were added after the QC inspection was completed and the plant shutdown was in progress. Notations were added such as "per Manual-hand tight" and that a wrench was used as opposed to the hand- tightening recommended for reassembly in GE Vendor Manual GEI-92807A. Although Nonconformance Report No. 86-070 was issued by the QA Department to address the activity beyond the approved scope of work and the lack of post-maintenance testing, the QCIR and NCR were after the fact and subsequent to direct QA involvement in the work under WR No. 102775. The QCIR was inappropriately completed and is misleading since, for example, later review of the document (without knowledge of the event or interview of the QC inspector involved) would indicate that QC was aware of the nut tightening criteria prior to the work and that QC identified the nonconforming conditions.

NCR 86-070 was resolved based on successful scram time testing of all 129 control rods. Corrective Action Request (CAR) No. 86-2028 was issued on August 25 to the Maintenance Division because of the programmatic nature of the issues involved. A response to the CAR was due by September 12, 1986, and not reviewed as a part of this inspection.

Reactor Shutdown

Upon discovery by the SSS of the work performed on the ten HCUs, Station management evaluated the potential effect of the packing adjustments on control rod operability. Scram insertion times for the ten control rods in question were concluded to be indeterminate at that time. Since the Technical Specification Action Statement requires that the plant be in a Hot Shutdown condition within 10 hours following the time at which control rod insertion times are unknown, a potential violation of Technical Specifications was identified by NMPC, necessitating the shutdown.

A plant shutdown was begun at 1:00 p.m. on August 22 and all rods were fully inserted by 7:28 p.m. that evening. An Unusual Event was declared at 1:00 p.m. and the NRC was notified via the ENS. A phone call was also placed to NRC Region I office by NMPC to describe the events that led to the shutdown. At the time of the Region I conference call, NMPC was unaware that all 129 HCUs (not just the ten HCUs specified on the WR No. 102775) had experienced packing adjustments, and that both the scram inlet and outlet valves had been worked (not just the CRD No. 126 valves).

Licensee Reviews and Immediate Corrective Actions

An investigation was begun on the afternoon of August 22, under direction of the Site Maintenance Superintendent. The results were documented in an August 23 memorandum to the General Superintendent of Nuclear Generation. The results were presented to a special session of the Station Operating Review Committee (SORC) on August 23.

NMPC's immediate corrective actions consisted of a revision to the administrative procedure for corrective maintenance, AP-5.0. The new features of the revision included:

- approval of the WR by senior licensed member of the Operations Department
- specification of appropriate post-maintenance testing prior to Shift Supervisor approval
- approval by the SSS (initialled on Line 26 of the WR) prior to commencement of work

The inspector discussed the results of NMPC's investigation and special SORC review of this event with the Superintendents of Maintenance and Nuclear Generation. While the immediate actions to revise AP-5.0 addressed a primary and obvious root cause, the inspector stated that other contributing factors were not apparently considered by NMPC, such as training deficiencies and hardware questions. For example, the inadequate direction given by first-line maintenance supervision, the working beyond the scope of the approved job by an experienced Chief

Mechanic, and the lack of recognition of the effect of a packing adjustment on a safety related air-operated valve suggest training deficiencies.

No effort was apparent on NMPC's part to investigate the cause of the missing nut on HCU No. 14-47, nor the cause of the loose nuts identified on the other nine CRD No. 126 valves listed on WR No. 102775. The inspector also found that the appropriate nut tightness was not critically evaluated, beyond the hand-tight recommendation. Finally, NMPC's investigation failed to identify or pursue certain facts associated with the event, such as:

-- The extension of scope of work performed, which was already beyond that approved on WR No. 102775, to the scram accumulators (No. 106 and 107 valves) on an indeterminate number of HCUs.

-- The absence of actual stem or packing leakage observed from any CRD No. 126 or 127 scram valve.

-- The extent to which the loose bolts were backed off of the gland flange, or how the nuts came to be loose or missing.

-- The appropriate torque value for the scram inlet and outlet packing gland flange nuts.

-- The modification of the stem coupling to allow a replacement nut to be installed on the scram inlet valve for HCU No. 14-47.

Post-Maintenance Testing

The August 23 SORC meeting reviewed the revisions to AP-5.0 and made Unit 1 startup contingent upon those revisions being placed in effect. Scram insertion time testing was performed for all 129 control rods on August 24 in accordance with Procedure No. N1-ST-R1. All control rods met their average and maximum insertion times for various notched positions as required by Technical Specifications, except for CRD No. 38-11. CRD No. 38-11 exceeded the maximum time to the 5% insertion point (2.4 notches) by 32 milliseconds, and WR No. 102820 was authorized to adjust the scram inlet and outlet valve actuator springs. The work was witnessed by QA as documented on QCIR 86-1294, and subsequent acceptable scram insertion times for CRD 38-11 were obtained on August 25. The inspector noted that CRD No. 38-11 was not one of the ten HCUs identified on WR No. 102775.

The inspector reviewed the WR and QCIR, discussed the work with personnel involved, and found that appropriate procedures were referenced, notifications and approvals received, and post-maintenance testing conducted.

LER 86-26

An LER was submitted to the NRC by letter dated September 19, 1986, to describe the shutdown required by Technical Specifications as a result of the packing adjustments to the scram valves. The LER described the potential safety consequences of overtightening the scram inlet and outlet valve packing nuts. An inappropriate packing adjustment on a scram outlet valve was evaluated to be a more significant risk since CRD No. 127 valve failure to open would prevent control rod insertion. Therefore, the LER concluded that the scram outlet valve adjustments presented a potential (although stated as "highly improbable") for an anticipated transient without scram. The same potential did not exist for an inlet valve packing adjustment, but rather only a potential for slow scram times.

The LER failed to address the common mode error associated with random tightening of CRD valve packing gland nuts without authorization or documentation committed by the maintenance mechanic. Specifically, the LER ignored the breakdown in training afforded the Chief Mechanic, and how the inadequate direction provided by first-line maintenance supervision contributed to the error. The LER also failed to address the role of QC in observing but yet failing to recognize the mechanic's errors, as well as the lack of written instructions and utilization of existing vendor technical manual information regarding torque requirements for scram valve packing. Finally, corrective actions described in the LER addressed only the revision to AP-5.0, making no mention of initiatives in the areas of training, repair procedures or vendor technical information.

Effect of Work on Scram Times

The inspector reviewed the scram insertion time test results for the ten control rods identified as having loose packing nuts. Times recorded for the two most recent tests (June 5 and August 24, 1986) were compared. The ten control rods met Technical Specification limits, and no appreciable time differences were observed for any rod between the two sets of data. The largest difference in 90% insertion times was 0.240 seconds for CRD 50-35. However, the slower insertion time for CRD 50-35 was still within acceptable limits and reasonable in light of the number of cycles and other factors experienced during the 80 day period between testing.

The comparison of mean 5% and 90% insertion times for the ten HCUs in question and a comparison of those times (for the last two tests) versus core average times and Technical Specification limits is as follows:

Mean Control Rod Scram Times
5% / 90% Insertion
(in seconds)

	June 5	August 24
Ten HCUs	.357/2.89	.362/3.01
Average of All Rods	.359/2.89	.365/2.99
Tech Spec Limits	.375/5.00	.375/5.00

The inspector concluded that the maintenance performed under WR No. 102775 had no measurable effect upon control rod scram insertion times. Therefore, no deterioration of the CRD scram function actually occurred because of the packing adjustments.

Technical Direction in Vendor Manuals

The inspector reviewed recommendations in the GE Vendor Manual GEI-92807A for the reassembly of the CRD No. 126 and 127 scram valves. The manual was not consulted or applied during the work under WR No. 102775, although a note existed on page 5-29 (step f) to hand-tighten the gland flange nuts, which should be sufficient to prevent excessive stem leakage. Additional tightening was recommended only enough to prevent stem leakage. The inspector noted that this evolution was intended for a valve with no pressure initially on the packing (i.e.,. a rebuild), and that the directions from GEI-92807A had not been properly transferred into Mechanical Maintenance Procedure No. N1-MMP-6.4 for overhaul of the HCUs.

Based upon discussions with the GE Site Representative, the inspector concluded that more recent technical information was available onsite with quantitative torque criteria for the CRD No. 126 and No. 127 valves. Operating and Maintenance Manual GEK-9582A contained more specific and up-to-date technical information regarding maintenance on the scram inlet and outlet valves. Section 5-59, Hammel-Dahl Scram Valve Packing Replacement, describes assembly and lubrication of five packing rings along with tightening of the gland flange nuts to an initial value of five inch- pounds of torque. A note cautions that, if stem leakage is experienced, additional pressure up to 15 inch-pounds is acceptable and that torque beyond that value will require post-maintenance stroke testing of the valve.

A vendor technical manual upgrade project institutad for the Maintenance Department was begun in June 1986. However, the manual for the CRD HCUs has not yet been reviewed. Based on discussions with Maintenance supervision, the technical manual upgrade is an extensive project that will take several years to complete. The inspector reviewed a list provided by NMPC's contractor performing the project for manuals currently under review and identified the initial number of manuals started to be approximately 100, although the majority were related to electrical maintenance associated with relays. The inspector noted that no defined prioritization existed for those manuals receiving initial review and incorporation into station procedures.

The inspector reviewed a memorandum dated August 26, 1986 from the GE site representative to the Supervisor of Technical Support that addressed the significance of the loose packing nuts. The condition was evaluated by GE San Jose engineering personnel. No similar BWR experience with loose nuts on the scram inlet and outlet valves could be identified. The theoretically loose packing (associated with loose or missing gland flange nuts) was concluded to present less stem drag force and result in faster valve stroke open time. NMPC's explanation of the loose scram inlet valve nuts was a geometrical argument that in diametrically tightening the four nuts the last nut to be tightened would tend to loosen another nut.

The inspector concluded that sufficient technical information was immediately available but never consulted prior to performing the work under WR No. 102755. Since no packing leaks were evident, the loose nuts could have been left as-is or appropriately hand-tightened without affecting control rod operability. Had a more thorough investigation by NMPC been able to confidently identify which scram inlet and outlet valves had been tightened and approximately how much torque had been applied by the mechanics, then the reactor shutdown may not have been necessary if that torque had not exceeded 15 inch-pounds. This was conceivable since the torque was applied to pressurized packing. However, the qualitative direction given and the "snugging-up" described by the Chief Mechanic probably would have exceeded the recommended hand-tightness or the 5-15 inch pounds of specification GEK-9582A.

Also, the inspector determined independently that other utilities have researched the quantitative bounds of "hand-tight" and have determined these to be between 10-30 inch-pounds of torque. Therefore, although insufficient technical direction was provided to the mechanics (either verbal, written or procedural instructions) to perform the CRD No. 126 valve packing adjustments, the decision to shut down the reactor was conservative and appropriate.

Mechanical Maintenance Training

The inspector reviewed the training records and experience of the Chief Mechanic and Assistant Supervisors involved in the work under WR No. 102775. All personnel had sufficient experience and training such that the violations of work scope and procedural notifications should not have occurred. Basic training in procedures, Technical Specifications, BWR systems, and technical skills such as for packing and seal maintenance had been received by the personnel involved during the last 3 years.

On the other hand, basic concepts and administrative controls generally applicable to routine performance of maintenance were not recognized or followed in this case, such as:

-- Working within the approved scope of the WR.

-- The effect of packing adjustments on valve operability.

-- Provision of appropriate work instructions (commensurate with the skills of a mechanic) via first-line supervision.

-- Performance of maintenance without a "mark-up".

-- The importance to reactor safety of the HCUs.

-- Clear notification of and approval by Shift Supervisor prior to release of safety related equipment for maintenance.

-- Understanding of responsibilities defined in AP-5.0 for corrective maintenance.

-- Appropriately defined post-maintenance testing.

The inspector concluded that, given the previous training and experience of the individuals involved, in contrast with the above mentioned concepts, a deficiency in the training provided to mechanics and first line maintenance supervision exists.

The apparent deficiency lies more within the administrative controls and operational interfaces involved in work rather than in the skills of the mechanic to actually do the work. However, the packing nuts were tightened without regard for the operability of the valve in spite of a lack of technical tightness criteria and even though no packing leaks actually existed. The inspector considered this conclusion to be of significance, since NMPC relies upon work performed in many cases (as with WR No. 102775) with no written procedures, because the activity is judged to be within the skills normally possessed by qualified maintenance personnel. This reliance shifts more burden upon the verbal instruction provided by first-line supervision and therefore their experience, as well as on the availability of clear technical reference material such as in vendor manuals.

Existing Administrative Controls on Maintenance

As discussed in ANSI Standard N18.7-1972, Section 5.1.6, Administrative Controls for Maintenance, to which Unit 1 is committed per Technical Specification 6.8.1, maintenance that affects the functioning of safety-related systems should be performed in accordance with written procedures, documented instructions or drawings appropriate to the circumstances. The standard addresses the use of appropriate vendor manual information or, in lieu of such, a suitably documented procedure that provides adequate instruction to assure the quality of the work. The standard recognizes that, for skills normally possessed by qualified maintenance personnel, a detailed step-by-step delineation in a written procedure is not necessary (such as a relatively simple packing adjustment). Nevertheless, the scram valve maintenance performed under WR No. 102775 was not performed in a manner to assure the quality of the CRD scram function, nor was a "suitable level of confidence" in the scram insertion capability attained (as called for in ANSI N18.7) by either quality inspections or post-maintenance testing. Moveover, ANSI N18.7 sets forth standards associated with maintenance work controls such as:

- Documented permission for equipment release for work by operating personnel, including length of time out of service.
- Development of new or existing repair procedures, as experience is gained in the operation of the plant, revising routine maintenance practices to improve equipment performance and also added to the compendium of already existing specific repair procedures.
- Evaluations of the cause of failed equipment.

The administrative controls present in AP-5.0, Procedure for Repair, were inadequate or in some cases, not followed in performance of the work under WR No. 102775. The overall lack of control of that maintenance is an apparent violation (50-220/86-17-06) of Technical Specification 6.8.1 as it applies to the administrative controls described in ANSI Standard N18.7-1972 and implemented in Procedure AP-5.0.

Attitudes Towards Safety

The inspector noted a proper concern for personnel and reactor safety among all individuals interviewed. However, a lack of critical questioning and attention to detail was evident in the activities associated with WR No. 102775. A tendency towards filling out the paperwork after the fact (e.g., the QCIR and WR) versus a focus on the potential technical ramifications of the packing adjustments was observed. Also, the NMPC's investigation and SORC review focused on a procedural revision and compliance with Technical Specifications while, at least initially, apparently dismissing hardware and training deficiencies. All personnel contacted were friendly and cooperative, and responded in a timely and serious manner to the concerns raised by the inspector.

7.3 Conclusions on CRD Maintenance Event

The tightening of packing on the CRD No. 126 and 127 scram valves was found to have an insignificant effect upon the scram insertion times of the control rods. The large spring opening force of the Hammel-Dahl scram valves is appreciably greater than the stem drag force caused by tightened packing, and it is doubtful that any change in rod insertion times occurred. None was discernible. Because the packing adjustments were hand-tightening of the nuts under pressure, no deterioration of the CRD scram function was realized.

A fundamental breakdown in work controls occurred which allowed activities to proceed beyond the approved scope of work and without proper Shift Supervision review and approval. Training of the mechanics and their first-line supervision was ineffective in that the importance and significance of a basic packing adjustment weren't recognized. Existing administrative controls for maintenance were ineffective and were violated. The verbal instructions given by first-line supervision, in lieu of written instructions or formalized procedures, were insufficient and proved to be not within the skills and training provided to the workers. Pertinent technical information was available but never consulted or translated into appropriate directions to the workers, nor was that information used after the fact to assess the significance of the event. Although all control rods were found to be operable during subsequent scram time testing, post-maintenance testing was not properly considered and defined prior to the work on the WR because of a failure to involve Operations personnel.

QA review of the scope and subsequent QC involvement and observation of the work were insufficient in identifying the above mentioned deficiencies. Also, QC documentation after the work was performed was inappropriate and misleading as evidenced by the completed QCIR. It should be noted that QC inspectors did identify the original loose nut conditions, and the QC inspector was the first individual to consult available technical information associated with the scram inlet valves, although not with the intent of defining proper packing gland nut tightness.

When eventually informed of the extent of the work performed, Operations personnel recognized the effect of the packing adjustment on control rod operability. Upon discovery of the work performed, and its potential effect on control rod operability, NMPC complied the Technical Specification Action Statement regarding control rod drive systems. An orderly reactor shutdown was accomplished within ten hours, an Unusual Event was properly declared, and the NRC was notified in a timely manner by NMPC management.

NMPC's immediate investigation and SORC review of the event failed to uncover certain pertinent factual information and was considered to be not sufficiently thorough or self-critical to identify potential root causes beyond the obvious notification and approval of Operations personnel. This suggests an overreliance on licensed operators to control plant maintenance activities. Although the event was analyzed in LER 86-026, no corrective actions have been proposed beyond the short term revision to AP-5.0, such as in the areas of vendor technical manuals, training and verbal/written direction to maintenance personnel.

8. PROGRAMMATIC ISSUES

In its August 15,1986 letter to the NRC, NMPC included an overview of the factors that potentially contributed to the problems covered in the allegations. NMPC concluded that the following four programmatic issues were involved in the allegations and warranted further consideration.

1. Procedures - NMPC found a number of problems with procedures, including some situations not covered by procedures, unclear QC involvement, areas of ineffective procedural coverage, and a weak procedure updating process.

2. Material Control - NMPC found that the control of loose LPRM and IRM connectors was inadequate, and a general review of material control would be undertaken.

3. Root Cause Analysis - NMPC found that the root cause analysis of problems at Unit 1 needed to be improved based on the repetitive maintenance on LPRMs and CRD pumps without correcting the problems.

4. Management Effectiveness - NMPC concluded that supervisory deficiencies, though not widespread, needed to be corrected.

In the August 18,1986 meeting between NMPC and NRC, the programmatic issues received considerable discussion. Based on this discussion NMPC expanded their review to the following programmatic areas.

1. Effectiveness of front line supervision
2. Informality of operations
3. Tendency for concerns to be kept at a low level
4. Quality Assurance involvement in programmatic issues
5. Ability to deal with hardware issues
6. Unit 2 effects on Unit 1
7. Repeat NRC inspection findings
8. Adequacy of root cause evaluations
9. Is management looking down for concerns
10. What level in organization are decisions made
11. Procedural issues, adequacy and informal practices
12. Radiation control

These topics were addressed by NMPC during a meeting with the inspection team on August 28 and were covered in the NMPC letter to the NRC on August 31, 1986.

9. SUMMARY AND CONCLUSIONS

The special inspection was in response to allegations initially presented to the NRC Unit 1 resident inspector on July 11, 1986 and subsequently investigated and evaluated by NMPC as presented in the August 18, 1986 meeting and in a summary report provided to Region I by letter dated August 31, 1986.

The special inspection team independently assessed the scope of the alleged technical issues and their broader programmatic implications for continued operation of Unit 1 and the potential licensing and operation of Unit 2. Although most of the allegations were found to be factually correct, their safety implications were subsequently determined to be minor and have been addressed by NMPC corrective actions.

The inspection reviewed the general effectiveness of the quality assurance program and its ability to find and correct the problems involved in the allegations. The review found that its capabilities were very limited regarding the potential for discovery of these types of problems. This review is documented in Section 5.

The inspection also incorporated the results of a Region I investigator's initial review of the NMPC internal investigation of the allegations. The review concluded that the investigative staff had an independent charter, free of undue management influence in their actions and conclusions, and that the assigned staff were experienced and credible. The NRC stated that NMPC should provide a final report of this investigation for NRC review and notify the NRC of any safety significant issues which the investigation might reveal. The NRC review is documented in Section 6.

The inspection reviewed the CRD valve maintenance activities, the resulting Unit 1 shutdown on August 22, and the NMPC internal investigation of the events. In this review the inspection found a fundamental breakdown in work controls, insufficient QC involvement, and a flawed NMPC internal investigation. This review is documented in Section 7.

Based on these reviews we concluded that there were certain programmatic weaknesses evident in the NMPC management system that allowed these issues to develop and in some instances spread, in that:

1. Methods within the organization to identify shortcomings and potential problems have not been effectively implemented. As a result, problems identified by NMPC staff are not always brought to the attention of management for resolution.

2. Once issues are identified, there are weaknesses in the NMPC review methods and management oversight which in some cases effect the ability to:

- determine contributors to the problem or event;
- identify the root causes; and
- evaluate the impact on broad program effectiveness.

3. The NMPC Operational Quality Assurance (QA) program was not as effective as it should be in helping the line organization to find and correct problems.

The inspection team acknowledged the alleged harassment of the I&C technician by his peers and supervisor for bringing these issues to NMPC QA and to the NRC. As contained in an August 18, 1986 letter the NRC recommended that these issues be presented to the U.S. Department of Labor (DOL) by the alleger and therefore, further NRC action will be dependent upon DOL action and NRC review of the final NMPC investigation report.

In the course of this special inspection, the NRC became aware of additional material that raised questions about the effectiveness of the overall QA program at Unit 2. In order to review these issues a QA audit team conducted an onsite followup inspection during the period of September 8-12, 1986, and the results are documented in Attachment 5 to this report. The team determined that there were no safety issues and no unresolved hardware issues. However, similar to the above special inspection the inspection concluded that some programmatic issues existed, primarily due to organizational problems. A response to these issues was requested in a November 19, 1986 letter.

The special inspection identified a number of apparent violations as documented in Section 4 of this report. Additionally, Attachment 3, Supplemental Report 50-220/86-16 contains proposed violations associated with the radiological controls program. A related programmatic inspection conducted September 10-12 and 15-19, 1986 identified a number of indications of inadequate control of operations, surveillance, maintenance and modification activities as discussed in Attachment 4 to this report.

An enforcement conference will be scheduled to discuss these issues and their programmatic implications.

ATTACHMENT 1

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
631 PARK AVENUE
KING OF PRUSSIA, PENNSYLVANIA 19406

File No. RI-86-A-0080
Docket No. 50-410
50-220

11 AUG 1986

Niagara Mohawk Power Corporation
ATTN: Mr. C. V. Mangan
Senior Vice President
300 Erie Boulevard, West
Syracuse, New York 13202

Gentlemen:

Subject: Allegations by Nine Mile Point 1 Instrument and Control Technician

Enclosed is a summary of allegations made by a Nine Mile Point Unit 1 Instrument and Control Technician about activities at Unit 1 expressed to our Resident Inspector initially on July 11, 1986 and subsequently amplified in discussions with our regional staff. We understand from the individual that he has informed your staff of all but the last two concerns, items 13 and 14.

Based on discussions between our staff and you and your staff on August 6 and 7, 1986 at the Nine Mile Point site, we understand that your investigation of these concerns is nearly complete. Please provide us with a written report of the results of your investigation. This letter is being placed in the Unit 2 docket as well as the Unit 1 docket because these potentially significant allegations could impact the schedule for Unit 2 licensing.

Following your submittal of the report, we ask that you arrange to meet with us in our Region I office as soon as possible to discuss the report. We appreciate your cooperation.

Sincerely,

William F. Kane

William F. Kane, Director
Division of Reactor Projects

Enclosures: As stated

cc w/o encl:
Connor & Wetterhahn
John W. Keib, Esquire
J. A. Perry, Vice President, Quality Assurance
W. Hansen, Manager of Quality Assurance
D. Quamme, NMP-2 Project Director
C. Beckham, NMPC QA Manager
T. J. Perkins, General Superintendent
R. B. Abbott, Station Superintendent
T. E. Lempges, Vice President, Nuclear Generation
T. Roman, Station Superintendent
J. Alrich, Supervisor, Operations
W. Drews, Technical Superintendent
Director, Power Division
Department of Public Service, State of New York
Public Document Room (PDR)
Local Public Document Room (LPDR)
Nuclear Safety Information Center (NSIC)
NRC Resident Inspector
State of New York

bcc w/o encl:
Region I Docket Room (with concurrences)
Management Assistant, DRMA (w/o encl)
DRP Section Chief
Region I SLO
Robert J. Bores, DRSS

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SUMMARY OF ALLEGATIONS

CRD Pump Vibration Testing

1. In March, 1986, after weeks of daily vibration tests of the CRD pump, testing was suspended when it was apparent that the increasing vibration would exceed the action limit of the ASME requirements and a plant shutdown would have been required prior to the scheduled March 8, 1986 shutdown.

Helium Leak Tests

2. In March, 1986, the chemistry supervisor noted that errors existed in the procedure for helium leak testing the stack gas system, in that portions of the system would not be tested. The alleger found the supervisor's conclusion to be correct. The I&C supervisor assigned the alleger to review the leak testing procedure and propose changes to it. After completing this work, the I&C supervisor sat on the proposed changes and later told the alleger to do the testing with the old procedure. The leak testing was done in April.

Feedwater Check Valve

3. The alleger was instructed to apply 100 psi air to seat the feedwater check valve after it had failed its initial test. It failed the second test also. Then the mechanic installing the replacement valve told the alleger that the valve seat was hammered in place. The valve passed the leak test, but stuck shut during startup.

4. The shift supervisor diverted flow in the feedwater lines to free the stuck feedwater check valve. There appeared to be no procedure for this and no management review. Eventually, the valve opened.

LPRMs

5. During the outage non-qualified technicians installed LPRM connectors in that A techs were installing them without direct supervision from C techs.

6. During the outage and years prior LPRMs connectors were routinely installed without proper Work Request (WR) paperwork, connectors replacements were represented on WRs as troubleshooting, and the installation and test procedure, LPRM-1, was routinely not used or filled out afterward.

7. Since the cable replacement six years ago the LPRM cables have not fit properly into the connectors. The cable dielectrics have been melted smaller (per LPRM-1) or the connector bores have been drilled larger to fit them together.

8. QC involvement in the LPRM connector work was improper in that I&C techs frequently did not inform QC that connectors were being replaced, and even when aware of the connector replacements, QC inspected only paper and never went under the vessel because they knew the work was unacceptable to specifications.

9. On July 10 a different design connector was installed on some LPRMs (prior to being discovered by the resident inspector), and no design change had been submitted for it. In addition, no work requests or LPRM maintenance procedures were prepared until after the resident inspector came down to witness this activity at which time the workers involved took a break to generate the paperwork and get it approved by the shift supervisor.

10. During the outage the alleger was harassed by fellow workers and discriminated against by his supervision due to his raising concerns about the LPRM connector work. The supervisors did little or nothing to correct his harassment.

IRMs

11. The connector on IRM 18 was replaced on June 7, 1986, and was not documented on the WR.

12. The plant was started up on the morning of June 17, 1986 based on falsified surveillance test records for the replaced IRM connector. The I&C techs and assistant supervisor falsified the test record without performing any of the required surveillance testing.

Other

13. An I&C technician working on LPRM connectors received a dose of 1.25 REM which was in excess of his administrative limit.

14. A piece of an aluminum tool about 1 inch by 8 inches was lost in the reactor vessel during the outage. The tool was used for installation and removal of feedwater line plugs.

ATTACHMENT 2

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
631 PARK AVENUE
KING OF PRUSSIA, PENNSYLVANIA 19406

18 AUG 1986

Docket No. 50-220
File No. RI-86-A-0080

Alleger's name and address
removed

Subject: Allegation Against Niagara Mohawk Power Corporation

This refers to your conversations with myself, Richard Matakas and Glenn Meyer on July 11, 14, 22, 23, 28 and 31, 1986 in which you expressed concerns related to instrument and control department practices at Nine Mile Point Unit 1.

Since you have also brought these concerns to the licensee's attention, we provided the licensee with a copy of the summary of allegations which you reviewed on July 31, 1986.

As you know, we have initiated actions to examine the facts and circumstances of your concerns and you will be informed of our findings. If you have any comments or corrections to your July 22, 1986 statement transcript which we provided you on July 28, 1986, please inform us as soon as possible.

With respect to the matter of your harassment by your supervisor, the United States Department of Labor (DOL) is responsible for handling such complaints, as we informed you when we provided you with a copy of NRC Form 3 on July 31, 1986. Therefore, we suggest you contact DOL for resolution of your complaint. A copy of DOL's "Procedures for Handling of Discrimination Complaints Under Federal Employee Protection Statutes" is enclosed.

In closing, let me assure you that we will evaluate and conduct an appropriate follow-up on the issues you have brought to our attention. It is concerned individuals such as yourself, who, in bringing such matters to our attention, assist us in meeting our responsibilities for protecting the health and safety of the public. Should you have additional questions, or if I can be of further assistance in this matter, please do not hesitate to contact me.

Sincerely,

J.C. Linville Jr.

J. C. Linville, Jr., Chief
Reactor Projects Section 2C
Division of Reactor Projects

Enclosure

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ATTACHMENT 3

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
631 PARK AVENUE
KING OF PRUSSIA, PENNSYLVANIA 19406

SEP 30 1986

Docket No. 50-220
50-410

Niagara Mohawk Power Corporation
ATTN: Mr. C. V. Mangan
Senior Vice President
300 Erie Boulevard West
Syracuse, New York 13202

Gentlemen:

Subject: Combined Inspection Nos. 50-220/86-16; 50-410/86-46

A routine radiological controls inspection was conducted by Region I staff members on August 4-7, 1986 at the Nine Mile Point Nuclear Station, Units 1 and 2. The findings of the inspection were discussed with Mr. T. Perkins.

The inspection covered the status of previous findings at Units 1 and 2 and preoperational testing at Unit 2. We also examined the circumstances and corrective actions surrounding: (1) the contaminated wound sustained by a worker at Unit 1 on April 1, 1986 and; (2) an off-scale dosimeter event on April 29, 1986 which also occurred at Unit 1. These incidents were brought to our attention by concerned workers.

Our findings associated with the contaminated wound are discussed in the enclosed inspection report.

Our review identified a number of apparent violations associated with the off-scale dosimeter incident. These violations are discussed in the enclosed inspection report. Because of the programmatic significance of these violations, we wish to schedule an enforcement conference to discuss them with you.

The need for and nature of appropriate enforcement action will be the subject of seperate correspondence following our conference. We will contact you to set up a mutually agreeable date.

Your cooperation with us in this matter is appreciated.

Sincerely,

CJCowgill III for

Thomas T. Martin, Director
Division of Radiation Safety
and Safeguards

Enclosure: Combined NRC Region I Inspection Report Nos. 50-220/86-16 and
50-410/86-46

cc w/encl:
T. E. Lempges, Vice President, Nuclear Generation
J. A. Perry, Vice President, Quality Assurance
T. Perkins, General Superintendent, Nuclear Generation
W. Hansen, Manager of Quality Assurance
T. Roman, Station Superintendent
J. Aldrich, Supervisor, Operations
W. Drews, Technical Superintendent
Troy B. Conner, Jr. Esquire
John W. Keib, Esquire
Director, Power Division
Public Document Room (PDR)
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Nuclear Safety Information Center (NSIC)
NRC Resident Inspector
State of New York

bcc w/encl:
Region I Docket Room (with concurrences)
Management Assistant, DRMA (w/o encl)
DRP Section Chief
Robert J. Bores, DRSS

U.S. NUCLEAR REGULATORY COMMISSION
REGION I

Report Nos. 50-220/86-16
50-410/86-46

Docket Nos. 50-220
50-410

License Nos. DPR-63
CPPR-112

Licensee: Niagara Mohawk Power Corporation
300 Erie Boulevard West
Syracuse, New York 13202

Facility Name: Nine Mile Point Units 1&2

Inspection At: Oswego, New York

Inspection Conducted: August 4-7, 1986

Inspectors: RL Nimitz 9/11/86
R. L. Nimitz, Senior Radiation Specialist date

RL Nimitz for 9/11/86
S. Sherbini, Radiation Specialist date

Approved by: M. Shanbaky 9/16/1986
M. Shanbaky, Chief, Facilities date
Radiation Protection Section

Inspection Summary: Inspection conducted on August 4-7, 1986 (Combined Inspection Report No. 50-220/86-16; 50-410/86-46).

Areas Inspected: Routine, announced inspection of licensee radiological controls including: licensee's action on previous findings at Unit 1 and Unit 2; organization, staffing, training, and qualification of personnel, preoperational testing at Unit 2; bulletins, circulars and information notices, and worker concerns.

Results: Several problems were identified in the implementation of radiological controls for LPRM replacement at Unit 1 (Details, paragraph 5.0).

Details

1. Persons Contacted

1.1 Niagara Mohawk

*T. Perkins, General Superintendent
T. Roman, Station Superintendent, Unit 1
*E. Leach, Superintendent, Chemistry/Radiation Protection Management
*P. Volza, Supervisor, Radiological Support
*J. Duell, Supervisor, Chemistry and Radiation Protection
*R. Gerbig, Radiation Protection Supervisor, Unit 1
*T. Irving, ALARA Coordinator

1.2 U.S. Nuclear Regulatory Commission

W. Cook, Senior Resident Inspector
C. Marschall, Resident Inspector

*Denotes those individuals who attended the exit meeting on August 7, 1986. The inspector also contacted other licensee personnel.

2. Purpose

The purpose of this routine, announced inspection was to review the following matters:

Unit 1

- licensee's action on previous findings;
- worker's allegation relating to receipt of unnecessary exposure sustained via residual radioactivity contained in a laceration;
- circumstances and licensee evaluation associated with an instance of off-scale dosimetry on April 29, 1986.

Unit 2

- licensee's action on previous findings;
- licensee's action on bulletins, circulars and information notices;
- preoperational testing of the following systems:
- Control Room Ventilation System,
- Standby Gas Treatment System,
- Process and Area Radiation Monitoring System.

3.0 Licensee's Action on Previous Findings

3.1 (Closed) Follow-up Item (50-220/83-27-01) Licensee to establish and implement the long term Radiation Protection Technician Training and Retraining Program. This and other matters associated with Training/retraining matters is being reviewed in conjunction with follow-up items 50-220/86-16-01; 50-410/86-46-01 and is closed for administrative purposes.

3.2 (Closed) Follow-up Item (50-220/84-22-03) Licensee's on-site radiation sources do not possess sufficient activity to calibrate high range radiation monitoring equipment. The licensee calibrates instruments on-site to about 320 R/hr. Administrative controls have been placed on use of these instruments in excess of this dose rate. The licensee now sends selected instruments (RO-7s) off-site for periodic calibration to 20,000 R/hr. This matter is closed.

3.3 (Closed) Follow-up Item (50-220/85-18-01) Licensee to establish and implement a program to train personnel in new procedures and procedure changes and establish a program as necessary to verify previous experience of contract radiological controls materials personnel. This matter is being reviewed in conjunction with follow-up item 50-220/86-14-01; 50-410/86-46-01 and is closed for administrative purposes.

3.4 (Closed) Follow-up Item (50-410/85-32-04) Licensee to complete preoperational and surveillance testing of area radiation monitors. The licensee has completed preoperational and surveillance testing of ARMs. Appropriate radiation sources were used to calibrate the detectors and test alarm function and trip values. This matter is closed.

3.5 (Open) Follow-up Item (50-220/86-16-01; 50-410/86-46-01) Licensee to establish and implement a training and retraining program for Radiation Protection personnel. The following was identified:

- A defined initial training program for Radiation Protection personnel has been established and implemented. Tasks for which an individual is to be qualified on based upon his/her scope of responsibilities, have been identified.

- A program to train personnel in new procedures and procedure changes is in place.

- A sufficient number of personnel have been trained and qualified to support Unit 2 fuel load activities.

- The scope and frequency of retraining/requalification for Radiation Protection personnel has been identified.

Within the scope of the review, the following matters needing licensee attention were identified:

- Upgrade retraining/requalification program for Radiation Protection personnel and associated procedures as described in the recently developed retraining/requalification action plan.
- Establish administrative controls for the training/qualification of "temporary Radiation Protection workers." Current procedures do not address "temporary licensee radiation protection personnel" (Note: These individuals are licensee employees and not contractors).

3.6 (Closed) Follow-up Item (50-410/85-47-01) Licensee to review and revise General Employee Training (GET). The licensee reviewed the GET Program for applicability to Unit 2. The program was revised to identify new emergency assembly areas. Appropriate personnel have been made aware of the new locations and will be retrained in these during their yearly GET requalification.

3.7 (Closed) Follow-up Item (50-410/85-20-07) Licensee to establish and implement a Radiation Protection and Radwaste Operator Training Program at Unit 2. The Radwaste Operator Training Program was reviewed during inspection 50-410/86-17 and found acceptable. The Radiation Protection personnel training program is discussed in item 3.5 above.

3.8 (Open) Follow-up Item (50-410/85-20-09) NRC to review Radiological Controls Organization for Unit 2. The Radiation Protection elements of the organization were reviewed and found acceptable to support fuel load. The chemistry organization and staffing was reviewed in inspection 50-410/86-17. The licensee was found to have trained an adequate number of radwaste operations personnel to support fuel load activities. The adequacy of the Radwaste Organization including descriptions in appropriate administration procedures remains open.

3.9 (Closed) Follow-up Item (50-410/85-32-01) NRC to review selected aspects of training and qualification program for Unit 2 Radiation Protection personnel. The matters associated with this item are discussed in section 3.5 above.

4. Worker Allegation (Unit 1) (RI-86-A-0074)

4.1 General

On June 16, 1986, a contractor worker, formerly employed at the Niagara Mohawk Power Station, Unit 1, contacted NRC Region I. The worker alleged that radioactive material, introduced into the tissue of his finger via a cut, still remained in the tissue and should have been removed. The worker was concerned that the remaining radioactivity was providing needless exposure to him.

The worker was contacted by an NRC Region I Senior Radiation Specialist on June 16, 1986.

The licensee was contacted via telephone on June 16, 1986 by a NRC Region I Senior Radiation Specialist to ascertain the general circumstances, and licensee evaluation surrounding the event.

A letter dated June 27, 1986 detailing the worker's concerns and requesting review of the concerns was transmitted to the licensee from NRC Region I.

An on-site inspection, by a NRC Region I Senior Radiation Specialist, of the worker's concerns was initiated on August 4, 1986.

4.2 Description

On April 1, 1986, while preparing a pipe for welding in the drywell at Nine Mile Point Unit 1, a contractor worker sustained a small cut (6 mm) to the fifth (small) finger of his left hand. A radiation survey of the cut showed that it was contaminated, measuring 2000 cpm at ½" using a pancake probe. An unusual event was declared at the site (contaminated injured person), and the worker was transported to Oswego Hospital for treatment, arriving there at approximately 1730. A radiation protection supervisor was present at the hospital to supervise radiation surveys and to advise the physician on radiological matters. After several trials, the physician succeeded in reducing the wound contamination down to 1000 cpm.

Based on an initial low dose estimate by the radiation protection supervisor, (50 mrem to the finger), the physician and the radiation protection supervisor agreed that it is not necessary to perform any additional tissue removal or decontamination.

Subsequent dose calculations by the licensee, using acceptable industry methods (ICRP 2 and NCRP 39), indicated 8.4 rem per calendar quarter as compared to the regulatory limit (10 CFR 20.101) of 18.75 rem per calendar quarter.

On July 18, 1986, the worker met with the licensee and a licensee's consultant (physician). In that meeting it was recommended that surgical removal of the remaining minute activity was not advisable because of potential complications. The health implications from the radiation dose to the finger were discussed and characterized as of minor and remote effects. The worker was satisfied with this discussion and the matter was considered closed.

The licensee is in the process of revising his procedures to provide for a clear guidance on dose calculations, wound surveys and survey documentation.

5.0 Off-Scale Dosimeter Allegation (RI-86-A-0080)

5.1 General

On July 11, 1986 a licensee worker contacted NRC Region I to discuss concerns associated with under vessel work performed at Unit 1 in late April 1986. The work was associated with incore instrumentation connectors (LPRMs) located under the vessel. In subsequent discussions, the worker mentioned an off-scale dosimeter incident that had occurred under the vessel.

An on-site inspection of the off-scale dosimeter incident was initiated by a NRC Region I Senior Radiation Specialist on August 4, 1986. The incident was determined to have occurred on or about April 29, 1986.

5.2 Description (Off-Scale Dosimeter, Unit 1)

As a result of a need to perform work associated with LPRM connectors under the reactor vessel, licensee I&C personnel met with ALARA personnel in late February and early March of 1986 to discuss the work and any associated radiological concerns. The first radiation work permit (RWP) was initiated at that time but not used. A pre-job ALARA review was issued for this work on March 7, 1986. A new RWP was issued on April 5, 1986 (RWP No. 2043). The RWP required work-party personnel to: report to the radiation protection technician at the drywell entrance and review survey maps prior to entry into the drywell; wear dosimetry on the head; and effectively organize tasks to reduce exposure.

A radiation survey performed at 9:20 a.m. on April 5, 1986 indicated dose rates of 120-150 mR/hr at the waist level, 300-450 mR/hr at the head level and 600-800 mR/hr at the flange area.

On April 20, 1986 at about 2:00 p.m. a second survey was performed under the vessel in the work area. The documented survey indicated 100 mR/hr to the ankle, 125 mR/hr to the waist and 150-200 mR/hr at the head level.

At about 3:30 p.m. on April 20, 1986 the affected I&C technician made an initial entry on RWP No. 2043. The individual was signed in on the RWP for 2.5 hours and received an exposure of 45 millirem. The technician received a low exposure because most of the time he was testing cables outside the drywell.

During the initial entry on April 20, 1986, the I&C technician read his dosimetry only once. He verified that his rate of accumulation of exposure was comparable with the dose rate information provided to him by the health physics control point technician. During subsequent work entries the I&C technician stated that he did not check his dosimeter reading while he worked under the reactor vessel. He only checked it when he was signing out at the end of his shift.

At about 3:30 p.m. on April 26, 1986, the technician signed in on RWP No. 2043. The individual worked for a total of 5.75 hours and received 190 mR. The individual made multiple entries and signed out at 11:15 p.m. on April 26, 1986.

At about 3:00 p.m. on April 27, 1986 the I&C technician again signed in on RWP No. 2043, remained signed in on the RWP for 2.5 hours and received 160 mR.

A radiation survey of the LPRM area under the vessel was performed and documented shortly before 3:10 p.m. on April 28, 1986. The survey showed 60-110 mR/hr at about 2 feet above the work platform and 140-300 mR/hr at the head level.

On April 28, 1986, at 3:30 p.m., the I&C technician again signed in on RWP No. 2043 and was signed in for 2.5 hours. The technician entered the drywell without re-zeroing his dosimeter. The dosimeter indicated about 300 mR. However, upon exiting the drywell, he found that his dosimeter was off-scale. The individual apparently did not inform the health physics personnel that his dosimeter was off-scale. He signed out "off-scale".

Due to an apparent breakdown in communications or a direct failure to inform dosimetry personnel that this pocket dosimeter had gone off-scale, the individual's TLD was not read at that time. The individual was issued a second TLD. The individual was not asked why he wanted a replacement TLD. No evaluation of the exposure causing the pocket dosimeter to go off-scale or subsequent personnel exposure sustained was made at the time. (Note: Radiological Control Supervisory personnel were unaware of the off-scale dosimeter.)

The individual signed in again that evening on RWP No. 2043 at 9:00 p.m. on April 28, 1986 and worked until about 11:30 p.m. He signed out with 250 millirem. No dose evaluation was made prior to his entry.

The individual turned in his extremity dosimetry and his second TLD badge at the end of his work shift that night. He did not turn in his film badge.

(Note: At Nine Mile Point, personnel are routinely issued a film badge along with an accompanying TLD badge. The TLD badge is read out under special circumstances (e.g. dose extensions) and is used to verify pocket dosimeter readings. The film badge is used as the dosimeter record and is normally processed the first and fifteenth of each month).

A resurvey of the LPRM work area was performed at 3:25 p.m. on April 29, 1986. The survey results were essentially the same as the previous survey conducted on April 28, 1986 (i.e. 300 mR/hr maximum exposure to the head).

At about 1:30 p.m. on April 29, 1986, the I&C technician attempted to sign in on RWP No 2043 to enter the drywell and work on LPRMs. However, radiation protection personnel would not let the technician enter because: 1) the computer generated exposure report had not been updated to reflect the technician's increase in quarterly exposure limit (1000 mR to 1500 mR) and 2) the control point was out of respirator face pieces. The control point received the exposure upgrade and additional face pieces. The technician entered the drywell at about 2:30 p.m. (April 29, 1986).

(Note: Based on subsequent licensee review, it appears that the individual, contrary to RWP requirements, did not obtain extremity dosimetry and entered and worked without the extremity dosimetry.)

The technician performed work on LPRMs in a kneeling/crouched position from 2:30 p.m. until about 4:30 p.m. (April 29, 1986). At that time the technician left the area under the vessel and went outside the drywell, and near the access control point. The technician left to clean the inner portion of his mask which was fogged.

The technician re-entered the drywell at about 4:40 p.m. (April 29, 1986). Due to fatigue, the technician stood up to work on one particular LPRM and remained in this position until about 5:30 p.m. In this position, the worker rested his head against a CRD flange. Unknowingly, the technician had rested his head in an area with dose rates later measured to be between 500-1200 mR/hr. The area had not been be posted as such (e.g. with hot spot stickers).

(Note: The I&C technician had not been prohibited from working in this manner. The technician did not request a radiation survey prior to standing up and placing his head on the CRD flange. The technician was not challenged by the health physics personnel.)

The technician was informed at this time (5:30 p.m.) via the headset that it was dinner time and work was halted. The technician exited the drywell, removed protective clothing and read his head pocket dosimeter. At this time he discovered his 500 mR pocket dosimeter to be off-scale. He informed the technicians at the access control point of this instance. This individual signed out on the RWP as "off-scale dosimeter" and was directed to the dosimetry area to have his TLD read.

The technician's TLD was read at 5:51 p.m. on April 29, 1986 and indicated 1266 mrem. This resulted in a total cumulative exposure of about 2050 mrem as compared to the regulatory limit of 3000 mrem per calendar quarter.

Upon learning of the incident at 6:30 p.m., the senior radiation protection technician overseeing drywell work, halted work on RWP No.2043. Additional radiation surveys were performed of this work area. The survey results indicated 300-800 mR/hr at 1 foot from the CRD flanges and 500-1200 mR/hr on contact with the flanges.

A meeting was held on May 1, 1986 between the involved technician, his supervisor and the radiation protection supervisor. A nonconformance event transmittal (NET) was initiated.

On May 2 and 5, 1986, the involved technician briefed his co-workers regarding the incident and lessons learned.

5.3 Conclusions (Off-scale dosimeter)

Evaluation of the information acquired during the inspection resulted in the following preliminary conclusions:

- On April 28, 1986 at about 3:30 p.m., an I&C technician sustained an off-scale pocket dosimeter while working under the reactor vessel at Unit 1. Contrary to 10 CFR 20.201, no evaluation was made of the potential exposure sustained by the individual. The individual re-entered the drywell and worked under the reactor vessel later that evening. The individual sustained an additional exposure that evening of 250 millirem.
- Contrary to the established procedures (S-RRI-12) on April 28, 1986 at about 3:30 p.m.: 1) an individual's dosimeter went off-scale; and 2) the individual may have sustained a potentially high exposure; but the individuals film badge was not sent off for special reading. (S-RRI-12, Section 4.0)
- Contrary to established radiation protection procedures, on April 28, 1986 at about 11:30 p.m. an I&C technician did not turn-in his whole body film badge when he returned his extremity dosimetry. (S-RRI-3, Section 4.2)
- Contrary to established radiation protection procedure, on April 29, 1986 at about 2:30 p.m. an I&C technician signed in on RWP No. 2043 and entered and worked under the RWP but did not obtain and use RWP required extremity dosimetry. (S-RP-2, Section 7.7)
- On April 29, 1986 adequate radiation surveys, sufficient to ensure compliance with 10 CFR 20 dose limits were not made by an I&C technician or requested to be made for him prior to his resting his head against a CRD flange. As a result, the technician unknowingly rested his head against a CRD flange with measured dose rates of between 500 and 1200 mrem/hour.

- During the period April 26 - April 29, 1986 inadequate high radiation area control was provided for LPRM work under the reactor vessel in that:

  1) RWP No. 2043, which controlled LPRM work, did not contain a specific frequency for performing periodic radiation surveillance of the LPRM work. The RWP indicated "intermittent" and intermittent was not defined.

  2) A radiation monitoring device which continuously indicates the radiation dose rate in the area was not provided to the technician. The dose rate instrument present (a portable Area Radiation Monitor)could not be used in areas entered by the technician (i.e. between CRD flanges).

  3) An integrating, alarming dosimeter was not provided to the technician.

- During the period April 26 - April 29, 1986, an I&C technician made repeated entries under the reactor vessel to perform work associate with LPRMs and was not adequately informed of the radiation levels emanating from CRD flanges in his work area. The individual unknowingly rested his head against a CRD flange, the radiation emanating from the flange caused the dosimeter to go off-scale. Subsequent surveys of the CRD flanges indicated contact dose rates of between 500-1200 mR/hr. (10 CFR 19.12)

- Contrary to established radiation protection procedures, on April 28, 1986 an I&C technician failed to re-zero his dosimeter prior to entering the Radiological Controlled Area to perform RWP work. Anticipated exposure was such that an off-scale reading could result. (Procedure S-RP-1, Section 5.6.4)

- Contrary to established radiation protection procedures, personnel did not initiate a Radiological Occurrence Report (ROR) on April 28, 1986 when an I&C technician's dosimeter went off-scale, due to the individual's failure to re-zero it prior to entering a high radiation area. Also, the technician did not periodically check the dosimeter reading while working under the vessel. (Procedure S-RP-5, Section 19.2.1)

- Contrary to established Radiation Protection Procedures, personnel did not issue a Radiological Incident Report on or about April 29, 1986 when it was determined that the I&C technician may have sustained excessive radiation exposure resulting from deficiencies in his performance and/or the performance of the radiation protection group. The individual's dosimeter went off-scale during work on LPRMs under the reactor vessel. (Procedure S-RP-5, Section 19.2.1)

- The I&C technician was provided specific instruction regarding re-zeroing of his dosimeter (anytime the hair-line approaches 75% of full scale). The technician was tested on this matter and other matters in a May 28, 1985 Radiation Protection Exam. The individual scored 87.5%. The individual answered the dosimeter re-zero question correct.

- The general employee radiation protection training was not specific relative to the frequency of reading a self-reading pocket dosimeter. The applicable training module said that the "frequency is determined by the dose rate in the area." No reading frequency was specified on the RWP used for LPRM work before or at the time of the off-scale dosimetry event (April 29, 1986). It was added subsequent to the event.

- The licensee's high radiation area access control procedure (S-RP-1) only provided for the use of a continuously indicating dose rate meter to meet technical specification high radiation area process controls (Technical Specification 6.12-1a). The use of an alarming dosimeter or periodic surveys was not described in the procedure. Technical Specification options 6.12.1 b and c respectively were not described. The licensee revised his procedure in March 1985 to allow use of these latter options when "directed by supervision." Procedural description of implementation methodology was not described.

5.4 Corrective Actions (Preliminary)

Based on a September 4, 1986 telephone conversation between Messers. M. Shanbaky, R. Nimitz, and S. Sherbini of NRC Region I, and Messers. E. Leach, J. Duell, and P. Volza of Niagara Mohawk, the following actions were taken:

- An evaluation of the off-scale dosimetry event was conducted by the Supervisor, Technical Support. The evaluation, dated August 12, 1986 provided: a description of the event; some conclusions; and recommended corrective action.

- A second evaluation of the off-scale dosimetry event was conducted by the Dosimetry Supervisor. The evaluation, dated August 29, 1986, provided a description of irregularities associated with dosimetry turn-in, handling, and processing.

- A corporate health physics group investigation of the off-scale dosimetry incident and a list of recommendations, was sent to the Manager, Chemistry and Radiation Protection on August 27, 1986.

- A meeting was held between corporate and site health physics personnel on August 28, 1986. A list of recommendations, action items, and responsible individuals was generated from the meeting.

- Pending revision of applicable procedures, the licensee informed the dosimetry personnel in memoranda dated August 14 and 25, 1986 that no replacement dosimetry was to be issued to personnel without proper dose evaluations being performed (excluding normal badge change-outs). The memorandum also provided instruction as to what actions to take following notification of an off-scale dosimeter.

- Pending procedure revisions to incorporate additional Technical Specification delineated high radiation area control options, a memorandum was issued to station personnel on August 27, 1986 to provide guidance relative to interface of workers with health physics personnel. The memorandum was issued to ensure workers and health physics personnel understand the work scope and location such that the current Technical Specification high radiation area control requirements contained in procedures are properly implemented.

6.0 Preoperational Testing (Unit 2)

6.1 General

The inspector reviewed the status of the preoperational testing of the following systems:

- Process and area radiation monitoring system (DRMS)
- Safety related ventilation systems

The review was with respect to criteria contained in the following:

- Regulatory Guide 1.68, November 1978, "Preoperational and Initial Start-up Test Program for Water Cooled Power Reactors";
- Final Safety Analysis Report, Section 6.5, "Habitability Systems";
- Final Safety Analysis Report, Section 6.5, "Fission Product Removal and Control Systems";
- Final Safety Analysis Report, (FSAR) Section 11.5, "Radiation Monitoring System";
- FSAR, Section 12.3, "Radiation Protection Design Features";

- Final Safety Analysis Report (FSAR), Chapter 14, "Initial Tests Program";
- ANSI N42.18-1980, "Specification and Performance of On-Site Instrumentation for Continuously Monitoring Radioactivity and Effluents"; and
- ANSI N13.1-1969, "Guide to Sampling Airborne Radioactive Materials in Nuclear Facilities".

The following matters were reviewed:

- system status
- establishment of appropriate test procedures
- administrative control of testing and review of test results
- adequacy of testing

The evaluation of the licensee's performance in the area was based on:

- independent inspector observation of selected systems including walkdown of safety-related ventilation systems
- review of test results
- discussions with testing personnel.

6.2 Findings

6.2.1 Digital Radiation Monitoring System (DRMS)

This system consists of process and area radiation monitors.

Within the scope of the review the following was identified:

- Preoperational testing of all Technical Specification and fuel load required process monitors is not complete. These include: Above and Below Reactor Building Vent Monitors, Control Room Vent Monitor and Cooling Tower Blowdown. No testing deficiencies were identified.
- All preoperational and surveillance testing of Technical Specification required area radiation monitors is complete. Surveillance testing has been completed on all area radiation monitoring systems. No testing deficiencies were identified.

- The licensee revised his FSAR to describe the actual location of some ARMS. The FSAR previously contained an incorrect location description for some monitors.

6.2.2 Safety Related Ventilation System Testing

This system consists of the Control Room Emergency Ventilation System and the Standby Gas Treatment (SBGT) System.

Within the scope of the review the following was identified:

- Preoperational Testing of the SBGT system, with the exception of in-place leak testing, is complete. Two test exceptions remain open.
- Preoperational Testing of the Control Room Emergency System with the exceptions of in-place leak testing is complete.

Within the scope of the review, the following matters were brought to the licensee's attention:

- System flow balancing is not complete
- Bolts were missing from covers of train A of the SBGT. Also, material was found stored on top of train A.
- Laboratory testing of a representative sample of charcoal from the systems was not performed. Consequently the systems do not meet operability requirements of the Technical Specification. The licensee completed laboratory testing. The test results were acceptable for the Control Room and SBGT systems.
- In-place testing results of by-pass leakage of train B of the SBGT System did not meet Technical Specification requirements. The licensee performed subsequent testing. Test results were acceptable.

7.0 Exit Meeting

The inspector met with licensee representatives, denoted in section 1 of the report, on August 7, 1986. The inspector discussed the purpose, scope, and findings of the inspection.

ATTACHMENT 4

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
631 PARK AVENUE
KING OF PRUSSIA, PENNSYLVANIA 19406

December 18, 1986

Docket No. 50-220 License No. DPR-63

Niagara Mohawk Power Corporation
ATTN: Mr. B.G. Hooten
Executive Director
Nuclear Operations
c/o Miss Catherine Seibert
300 Erie Boulevard West
Syracuse, New York, 13202

Gentlemen:

Subject: Inspection Report No. 50-220/86-13

This refers to the special safety inspection conducted by Mr. G. Napuda of this office on September 10-12 and 15-19, 1986, at Nine Mile Point Unit 1, Oswego, New York and your corporate offices in Syracuse, New York, of activities authorized by NRC License No. DPR-63 and to the discussions of our findings held by Mr. Napuda with Mr. T. Lempges and other members of your staff at the conclusion of the inspection.

Areas examined during this inspection are described in the NRC Region I Inspection report which is enclosed with this letter. Within these areas, the inspection consisted of selective examinations of procedures and representative records, interviews with personnel, and observations by the inspector.

Based on the results of this inspection, we are concerned that the control for your operations, surveillance, maintenance and modification activities may be inadequate. Similar concerns were also identified in recent NRC Region I inspections (50-410/86-61, 50-220/86-07, 86-16 and 86-17) of both Units 1 and 2. The findings of the attached inspection report along with the findings of NRC inspection 50-410/86-61, 50-220/86-16 and 86-17 will be the subject of future enforcement conference. We will contact you, separately to set up a mutually agreeable date for this conference.

The need for and nature of appropriate enforcement action relative to the issues identified in the enclosed report will be considered after this conference and will be the subject of separate correspondence at a later time.

With regard to your actions for control of vendor technical information (discussed in Section 4.2 of the enclosed report), we believe that your current 1988-1989 schedule for completion of vendor technical manual validation and approval is not responsive to Generic Letter 83-28. You are therefore requested to reevaluate your planning in this regard and advise this office in writing of your actions to expedite the validation process.

Your cooperation with us in this matter is appreciated.

Sincerely

for William V. Johnston
Stewart D. Ebneter, Director
Division of Reactor Safety

Enclosure: NRC Region I Inspection Report No. 50-220/86-13

cc w/encl:
T. E. Lempges, Vice President, Nuclear Generation
J. A. Perry, Vice President, Quality Assurance
T. Perkins, General Superintendent, Nuclear Generation
W. Hansen, Manager of Quality Assurance
T. Roman, Station Superintendent
J. Aldrich, Supervisor, Operations
W. Drews, Technical Superintendent
Troy B. Conner, Jr. Esquire
John W. Keib, Esquire
Director, Power Division
Public Document Room (PDR)
Local Public Document Room (LPDR)
Nuclear Safety Information Center (NSIC)
NRC Resident Inspector
State of New York

U.S. NUCLEAR REGULATORY COMMISSION

Region I

Docket No. 50-220

License No. DPR-63 Category C

Licensee: Niagara Mohawk Power Corporation
300 Erie Boulevard West
Syracuse, New York 13202

Facility Name: Nine Mile Point Unit 1

Inspection At: Oswego and Syracuse, New York

Inspection Conducted: September 10 - 19, 1986

Inspectors:
G. Napuda, Lead Reactor Engineer — 10/16/86 date

D. L. Caphton, Sr. Technical Reviewer — 10/16/86 date

J. G. Hunter III, Reactor Engineer — 10/16/86 date

for D. L. Harris, Jr., NRC Consultant — 10/16/86 date

for D. A. Beckman, NRC Consultant — 10/16/86 date

Approved by: for Dr. P. K. Eapen, Chief, Quality Assurance Section, OB, DRS — Oct 21, 1986 date

Inspection Summary: Special announced inspection on September 10-19, 1986 (Report No. 50-220/86-13)

Areas Inspected: Licensee's actions to address the concerns identified in NRC Generic Letter 83-28 in the areas of Equipment Classification, Vendor Interface, Post Maintenance Testing, Plant Surveillances, and QA/QC Overview.

Results: Six violations were identified (inadequate design/drawing control; failure to control measuring and test equipment; failure to control safety related maintenance activities; inadequate housekeeping; failure to implement surveillance procedures; inadequate inservice testing).

DETAILS

1.0 Persons Contacted

Niagara Mohawk Power Corporation (NMPC)

D. Balduzzi, Supt., Records Management
W. Bandla, Asst. Supt. Operations
*J. Buckley, QC Supervisor
R. Coon, Instrument and Control Supervisor
K. Dahlberg, Maintenance Superintendent
*W. Drews, Technical Superintendent
M. Falise, Supt., Mechanical Maintenance
*P. Francisco, Licensing Lead Engineer
*P. Frasier, Electrical Design Engineering
*F. Kawksley, Inservice Inspection Supt.
*W. James, Instrument and Control Supervisor
*T. Lempges, Vice President, Nuclear Generation
R. Longo, Suprv, Mechanical Maintenance
M. Masuicca, Asst. to Supervisor of Operations
*M. Mosier, NMPC Inspection Liaison
*R. Pasternak, Manager, Consulting, Nuclear Technology
*T. Perkins, General Superintendent
*R. Randall, Supervisor, Technical Support
*T. Roman, Station Superintendent, NMP-1
*F. Stelter, Auditor
*K. Sweet, Supt., Electrical Maintenance

United States Nuclear Regulatory Commission

*W. Cook, Senior Resident Inspector
*C. Marschall, Resident Inspector

The inspectors also contacted other licensee administrative and technical personnel during the course of the inspection.

*Present at the September 19, 1986 Exit Meeting

2.0 Inspection Summary

2.1 Background

The reactor trip system, as part of the reactor protection system, is fundamental to reactor safety for all nuclear power reactor designs. Transient and accident analyses are predicated on the assumption that the reactor trip system will automatically initiate reactivity control systems on demand to assure that fuel design limits are not exceeded.

The design and regulatory philosophies for attaining the high reliability required of the reactor trip system have primarily relied on the use of redundancy, periodic testing, and quality assurance.

In February 1983 the Salem Nuclear Power Station experienced two failures of the reactor trip system on demand.

Regulatory and industry task forces were formed to determine the safety significance and generic implications of the events. Based on these findings, certain actions were required of all licensees.

These actions, transmitted in Generic Letter 83-28, fall into four areas.

(1) Post-Trip review,

(2) equipment classification and vendor interface,

(3) post-maintenance testing, and

(4) reactor trip system reliability improvements.

NMPC submitted their response to Generic Letter 83-28 in letters listed in Attachment A. This inspection included the areas of equipment classification, vendor interface, post maintenance testing, and QA/QC interface.

2.2 Inspection Results

Six violations with multiple examples were identified as detailed in paragraphs 3.2.a and 5.2.c. Two unresolved items were identified and are discussed in Paragraphs 4.2 and 5.2.c.

Except for the weaknesses detailed in the violations, and unresolved items, the licensee's actions were found to adequately address the concerns of the Generic Letter 83-28 and were consistent with their commitments provided in the letters listed in Attachment A.

3.0 Equipment Classification

3.1 Program Review

The inspectors reviewed the applicable documents listed in Attachment A and determined that the Equipment Classification Program addressed the following:

-- Safety related components are identified as such in written procedures for procurement, maintenance, and modification.

-- Management oversight of source documentation for the designation of safety related systems and components.

- -- Corporate level procedures for safety related component procurement, maintenance, and modification.
- -- Periodic Quality Assurance audits of activities impacting safety related equipment.
- -- Corrective action program for safety related equipment.

3.2 Program Implementation

The licensee uses the NMP-1 Q-List to identify safety related items at the "system" level. The Q-List specifies the boundaries of the safety related portions of each system by reference to the system drawings (P&ID, elementary diagram, etc.). Further definition is also provided by a computer based "component" level listing.

The Q-List was managed as a controlled document under the cognizance of the corporate QA Engineering staff.

A field comparison of system mechanical drawings and electrical elementary diagrams versus installed equipment was performed and certain components were selected for verification of the implementation of the licensee's Equipment Classification Program. For each component selected, the inspectors reviewed the adequacy of safety classification, procurement, receipt, storage and handling activities as discussed in the following sections of this report.

a. Reactor Protection System (RPS)

Recirculation Pump MG Sets

A visual inspection of the Recirculation Pump Motor Generator Set field breakers confirmed correct component labeling. Components were correctly classified in accordance with the component Q-List.

During the walkdown, all four breaker and control cubicles were found to contain loose nuts, bolts, relay covers, and terminal cover protectors (found on the floor inside the cubicles). Also, in three of the cubicles loose wires (equipped with terminal lugs) were observed lying on the floor.

Station Administrative Procedure 8.5, Housekeeping and Cleanliness Control, Appendix A, provided guidelines for maintaining acceptable fire protection and housekeeping conditions. The procedure required that "trash, rubbish, etc. are not present in cable trays, in or on top of energized switchgear, instrument racks or control cabinets". The above represents a violation of the housekeeping and cleanliness requirements of AP-8.5 (50-220/86-13-01).

Also, eight cables inside the cubicle could not be identified, due to the lack of cable tags.

The licensee's electrical supervisor responded to these findings by issuing work requests (WRs) to correct the above; the WRs (see Attachment A) were completed and the conditions corrected prior to the close of the inspection.

ATWS Control Panel

On September 12, 1986 the inspector visually inspected the ATWS Instrument Panel No. 1S48. The licensee supplied drawing (C-34122-C/1, Revision 2) did not reflect the actual panel wiring configuration. The licensee was notified and their review of this condition established that the drawing had been updated from Revision 2 to Revision 3.

On Sept 15, 1986, the inspector was provided the Revision 3 drawing, reinspected the panel, and noted that the as installed wiring connections were still not in agreement with the drawings. The drawing revision 3 was verified by the inspector to be the most current available at the facility through the Document Control Group.

The inspector then requested the licensee to perform a complete panel wiring verification versus the latest available drawings. The licensee's verification effort confirmed and documented the nonconformities between the panel wiring and drawings on September 15, 1986. The licensee was again notified that the plant documents did not reflect the as-built condition of the panel.

Concurrent with the above verification effort, the Document Control Group found that a Revision 4 of the drawing had been entered in the document control computer system as a "pending revision" by NMPC (Syracuse) Engineering on the morning of September 15, 1986, which was after the inspector's walkdown. The licensee explained that a plant modification had been done early in 1984 and that the drawing had not been updated.

The licensee was asked to provide the modification package or any documentation that would reflect the modification's as installed configuration in the panel. No such information was available onsite to reflect the as-built condition of the panel.

On September 16, 1986 the Revision 4 drawing was delivered to the site by a NMPC (Syracuse Office) engineer and was verified by the inspector to reflect the as-built condition of the panel.

Site Administrative Procedure APN-9, Procedure for Station Permanent and Temporary Modifications and Replacements, Revision 3, (in effect at the time of the above modification), required, in Section 5.3.1 and 5.3.4, that drawings reflecting plant modifications be prepared and delivered to the Station Superintendent in a timely manner. The above drawings were inadequately maintained in that revisions reflecting the installed plant modifications were not provided to the site until more than 24 months after completion of the modification. Failure to maintain drawings reflecting the as-built condition of the facility constitutes a violation of administrative procedures for control of modifications. (50-220/86-13-02)

Subsequent to this inspection, during the week of Septmber 22, 1986, the licensee notified the NRC Resident Inspectors that additional discrepancies had been identified in the ATWS Panel wiring (above). Apparently, the delay in issuing as-built drawings from the 1984 modifications had resulted in subsequent panel wiring modifications being performed with erroneous, unrevised drawings. As a result, an ATWS Panel "Loss of Voltage" annunciator circuit was miswired, rendering it inoperable.

On a loss of voltage to the ATWS Panel, certain circuits, including the Recirculation Pump ATWS Trip, require manual reset action to rearm them. The annunciator is intended to alert the operators to perform the manual reset.

The inoperability of this annunciator could result in undetected inoperability of the ATWS Recirculation Pump Trip if the ATWS Panel circuits were deenergized and reenergized and the operators failed to recognize that the condition required manual reset without the benefit of the annunciation. However, existing restoration procedures and other operable annunciators appear to provide assurance that the manual reset would be accomplished. Other inspection efforts related to this matter were in progress and will be reported in inspection reports Nos. 50-220/86-17 and 86-18.

The NRC Resident Inspectors are conducting followup inspection in this regard; results of their inspection will be reported in NRC Region I Inspection Report 50-220/86-18.

The inspector also checked training records and verified that plant operators had been trained on the modification June 25, 1984.

REMOTE SHUTDOWN PANELS (RSP)

The inspector visually inspected the RSP Channel #12 and found loose bolts, washers, screws, a box of fuses and retaining clips on the floor inside of the cubicle. Cables enter the top of the panel and it was noted that the cable protector (bushing) on the top panel opening was partially removed. The licensee's electrical supervisor was informed of these conditions and took immediate action to correct the noted conditions by issuing WRs. The above is another example of poor housekeeping and part of violation (50-220/86-13-01).

Further drawing control discrepancies (see ATWS Control Panel above) were identified in that drawing C34813C, Sheet 6, Revision 1, showed field wiring connected to panel terminals R7, R8, R9, R10, R11, S5, S6 and S7. However, physical inspection determined that nothing was wired to the terminals. Drawing C34813C, Sheet 5, Revision 0, showed a shield wire for a drywell pressure instrument channel wired to terminal M4. Physical inspection showed the wire actually landed on terminal M1. Also, drawing C34813C, Sheet 4, Revison 1, shows terminal A13 to be wired for an emergency condenser water level channel which did not exist in the panel; the field wire was actually terminated on point B1.

The licensee representatives were unable to establish the reason for the discrepancies between the drawings and the as-installed wiring but stated that it appeared to be the result of a modification. The electrical supervisor issued a Drawing Change Request to correct the drawings. This is an example of failure to control as-built drawing changes resulting from modification activities. (50-220/86-13-02)

The RSP channel #11 had the same type of drawing configuration control problems as channel #12 and is considered to be a further example of violation 50-220/86-13-02.

Also, during the inspection of Panel 11, the inspector found that three steel panel isolation barriers, which separate non-safety related equipment and wiring from safety related equipment and wiring, were removed and lying on the floor of the cubicle, apparently the result of in-progress or improperly completed maintenance activities.

The licensee was unable to identify the reason for disassembly of the isolation barriers. No in-progress activities were apparently authorized for the panel. The absence of the barriers is also a deviation from the electrical separation criteria requirements of the NMP-1 FSAR, Section IX 3.1.

Five SMB switch covers, and four relay covers were observed lying on the floor of the cubicle. Also a spare instrument was missing from the front of the panel. The electrical supervisor issued WRs for immediate corrective action.

Procedure AP-5.0, Procedure for Repairs, provides the requirements for controlling and documenting maintenance activities on safety related systems, components, and structures and provides for restoration of systems components and structures upon completion of maintenance activities. Failure to control maintenance activities on safety related equipment in accordance with approved procedures constitutes a violation (50-220/86-13-03).

As a result of the discrepancies in as-built drawing accuracy, the sample of modification-affected drawings was expanded for field verification to determine whether the drawings accurately represented existing plant configuration and installed modifications. The expanded sample included:

Modification	Drawing
83-08	C18017-0, Revision 26
82-80.5	C19859-C, Sh. 8&9, Revision 22
82-69	C19859-C, Sh. 2&5, Revision 23

The inspectors noted that the actual drawing revisions had not been made until 1984 for the 1982 modifications. No additional discrepancies were identified.

b. 4160 V Safety Related Switchgear

The under voltage and degraded voltage relays were reviewed for proper safety classification in the Q-List. The relays and timers were physically inspected in the presence of a plant electrician. All components were correctly labeled in accordance with plant documents. No violations were noted.

c. Emergency Core Cooling Systems

1. Mechanical

Portions of the Feedwater/High Pressure Coolant Injectio (HPCI), the Shutdown Cooling (SDC), Emergency Cooling (ECS), Containment Spray (CSS), and Control Rod Drive Hydraulic (CRDHS) systems were visually inspected and the following components were selected for verification of safety classification controls.

SOV 117/118	CRDHS Scram Pilot Valves
CV126/1127	CRDHS Scram Valves
SOV NC 16A	Backup Scram Solenoid Valve
SOV NC 16B	Backup Scram Solenoid Valve
80-23/24	Containment Spray Pumps
80-35/16	Containment Spray Valves
SOV 80-16C/D	Containment Spray Solenoid Valves

80-33/34	Containment Spray Heat Exchanger
38-04A	SDC Valve and Operator
38-01	SDC Valve and Operator
FCV-30-10	SDC Valve
38-13	SDC Valve and Operator
39-10A	ECS Valve and Operator
39-08A	ECS Valve and Operator
39-06	ECS Valve and Operator

NOTE: The above samples were also used for selection of work request and post maintenance testing review samples.

The inspectors reviewed MRs (listed in Attachment A) for proper safety classification, QC coverage, post maintenance test requirements, maintenance and test equipment used, spare parts used and appropriate supervisory reviews and approvals. A review of the Q-List determined that the above components were correctly classified in Maintenance Requests (MRs) and procedures (listed in Attachment A).

No violations were identified.

d. Instruments and Controls

Instrumentation and controls (I&C) associated with the Reactor Protection, Emergency Core Cooling, and Control Rod Drive Hydraulic systems were visually inspected and the following components selected for verification of safety classification.

PS 80-70/74	CSS Suction Alarm
PT 80-69/75	CSS Pump Discharge Pressure
12K5	HPCI Initiation Logic Circuitry
11K5	HPCI Initiation Logic Circuitry
12K6	HPCI Initiation Logic Circuitry
11K6	HPCI Initiation Logic Circuitry

NOTE: The above samples were also used for selection of work request and post maintenance testing review samples.

The field walk down verified that the above components identified were properly and clearly marked in the field and corresponded to the current revision of system diagrams. The licensee's Q-List properly designated both the systems and components reviewed.

Work Requests (WR's) were examined for selected components of the RPS, HPCI, SDC, ECS, CSS, and CRDHS to verify proper safety classification of repairs and spare parts used. The WRs reviewed are listed in Attachment A. In all cases, safety classification of work and spare parts used was in agreement with the licensee's Q- List and supplementary indices.

No violations were identified.

e. Purchasing and Storage

The licensee's purchasing and storage activities were reviewed using the components selected. The purchase documents (listed in Attachment A) were complete and contained:

-- Proper safety classification

-- Environmental requirements

-- Seismic category

-- National codes criteria (e.g. IEEE, ASME)

-- 10 CFR 21 requirements

-- Shelf life provisions requests

-- Documentation (e.g. Certificates of Conformance, Test Reports) requirements

-- Vendor technical information (e.g. manuals, storage conditions) requirements

The onsite warehouse was toured. Cleanliness, storage environment, item identification, traceability, access restrictions, and shelf life controls were adequate for a sample of items similar to or associated with reviewed Purchase Orders (POs).

The licensee has engaged an agent to evaluate those items in stock subject to age deterioration and to establish a program for shelf life controls. The agent and licensee warehouse personnel have primary roles in this effort that include the following major program aspects:

-- contact of component vendors, composition manufacturers and the NSSS for shelf life information

-- use of published data such as Military Standards

-- consideration of components containing internal parts subject to shelf life considerations

-- marking of components and spare parts as to shelf life expiration dates and their inclusion in a listing

-- removal of expired stored components and spare parts to a hold area until final determination of action is made

-- continuation of this effort for items that were missed and any newly purchased items lacking shelf life information

-- a requirement in purchase documents for vendors to supply shelf life informaiton

No violations were identified, however the following concern is being followed by the Resident Inspectors and will be addressed further in Inspection Report 50-220/86-18.

The recent failure of a Hydraulic Control Unit Scram Outlet Valve Actuator diaphragm, Stock Number 95-26-028, was attributed by the licensee to aging deterioration. The shelf life provisions, purchase, length of service, and status of changeouts for these diaphragms were reviewed with the following results:

-- item composition is Buna-N and nylon

-- stocked spares were purchased in 1975 (Purchase Order 87787)

-- the item was not evaluated during the initial shelf life review

-- an evaluation by the NSSS estimated shelf life to be seven years while the licensee's shelf life program age determination is five years

-- the licensee had removed stocked items to a hold area pending determination of final action

-- approximately half of the installed scram valves, purchased prior to 1970, still contain original diaphragms

-- no service life expectancy determination had been made for this or other items subject to aging deterioration while in service

-- The licensee had not yet decided on a changeout program for these valves nor considered what other valves fall into this category.

4.0 Vendor Interface

4.1 Program Review

The Vendor Technical Manual Upgrade Project Control Plan, Revision 0, details the specific actions, responsibilities, interfaces and sequential steps to implement the vendor information control portion of the Nuclear Utility Task Action Committee (NUTAC) proposal for a Vendor Equipment Technical Information Program (VETIP).

NMPC has contracted an agent to assist in the identification, evaluation, vendor contact, validation, approval, and issuance of accurate and controlled vendor manuals. The agent and Maintenance and Engineering Departments have primary roles in this project. The following are the major aspects of this effort.

-- Manual inventory

-- Reviews and comparison of manual and maintenance procedures and resolution of comments

-- Determination of need for licensing and environmental qualification reviews

-- Field verification of components in plant and determination of appropriate action if differences are found

-- Tracking status of above, assignment of identifiers to validated manuals, and provision of program controls for future updating

No violations were identified.

4.2 Program Implementation

Approximately 1600 vendor manuals were identified; over 500 vendor contacts were completed; plant procedures for almost 200 manuals were reviewed; and maintenance comments resolved for over 90. However, engineering comments, master copy markups and final approval have not been completed for any manual. The projected completion date for the agent's activities is mid-1988 and the licensee review and final approval of all manuals is targeted for mid-1989.

The licensee was informed that the status and anticipated completion dates of the project were not as advanced as anticipated by NRC, based on NRC's understanding of the NMPC responses to Generic Letter 83-28. The licensee was advised that the acceptability of the above would be unresolved pending NRC:RI review. (50-220/86-13-04)

The following were reviewed with respect to vendor supplied manuals and supplementary information.

a. Reactor Protection System

The inspector reviewed the General Electric vendor manual on AK2-25 type breakers used on the Recirculation Pump MG Sets (part of the ATWS pump trip circuit). Currently NMP-1 does not interface vendor technical letters or service advisories with vendor manuals. However the SIL's and SAL's are reviewed by the plant staff for applicability to station procedures and activities.

The technical information supplied by GE suggests the AK breakers being used as Reactor Trip Switchgear breakers should be considered safety related. This licensee's breakers are non-safety related. The licensee has not incorporated the suggested 20 ounce-inch force adjustment on the tripper bar of the breaker and uses the maximum force of 24 ounce-inches. Further advice from GE for AK breaker reliablity suggests the update of the front frame assemblies with the Mobil 28 lubricated bearings. Again the licensee considers the advisory to be applicable for Reactor Trip breakers only.

b. Mechanical Systems

The inspectors reviewed preventive and corrective maintenance procedures, surveillance tests, and post maintenance test instructions listed in Attachment A for technical accuracy and appropriate references to, and incorporation of vendor technical information. The inspectors determined that the documents reviewed appropriately incorporated such information.

The inspectors also reviewed the licensee's preventive maintenance program general implementation status per Administrative Procedure 8.1, Preventive Maintenance, through review of preventive maintenance schedules and completion status, interviews of key personnel, and review of completed maintenance records listed in Attachment A.

NSSS Vendor Recommendations

The licensee is currently addressing NSSS vendor (GE) recommendations. The licensee has initiated action for GE's Rapid Information Communication Services Information Letter (RICSIL) 008 and

Services Information Letter (SIL) 441 concerning Control Rod Drive Scram Anomalies. RICSIL 008 provided the initial notification of problems with scram solenoid valves repair kits.

SIL 441 updated the information in RICSIL 008 and advised that scram solenoid repair kits shipped prior to July 17, 1986 could be defective and should be returned to GE for reinspection. GE also advised that facilities with such kits already installed should continue to use Technical Specification (TS) surveillance testing to demonstrate Control Rod Drive Hydraulic System (CRDHS) operability. SIL 441 provided additional instructions for inspecting solenoid valve core springs and core assemblies to assure proper operation.

The licensee is in the process of gathering the affected repair kits for return to GE. Onsite inspections per SIL 441 will be performed on those kits retained as spares until the reinspected kits are returned from GE. The licensee informed the inspector that one half (previously one third) of the scram pilot valves would be rebuilt during each outage.

c. Instrumentation and Controls

Instrument calibration procedures and data listed in Attachment A were reviewed to determine adequate incorporation of vendor information. The review included a sample of data from recently completed functional tests and calibrations.

No Violations were identified

5.0 Post Maintenance and Surveillance Testing

5.1 Program Review

The inspectors reviewed the procedures in Attachment A to determine that the following were addressed during the performance of maintenance:

-- Written procedures provide for initiating requests for post maintenance testing.

-- Criteria and responsibilities for review and approval of maintenance.

-- Criteria and responsibilities for the basis of safety related/non-safety related activity designated.

-- Criteria and responsibilities for inspection of post maintenance testing.

-- Methods for performing functional testing following maintenance.

-- Administrative controls for documentation of maintenance activities.

No violations were identified.

5.2 Program Implementation

Post maintenance testing is initiated and tracked in accordance with Administrative Procedures AP-5.0, Procedure for Repair, and TDP-8, Post Maintenance Testing Criteria. The inspectors reviewed maintenance activities listed in Appendix A and compared the documentation of those activities with the requirements of the above procedures, the facility Technical Specifications, and available vendor supplied information.

Except for the violations noted below, the licensee's program for assuring adequate post maintenance testing and surveillance testing appeared to be functioning acceptably. The existing practice includes retaining copies of the detailed records of such testing with the maintenance records, providing definitive confirmation of testing adequacy.

a. Reactor Protection System

The inspector determined that the licensee had identified a reliability problem with the MG set voltage regulators and had initiated a plant modification to improve reliability. The inspector reviewed the plant modification package and discussed the licensee's plans with the Technical Services supervisor.

The modification package did not appear to include sufficient information to complete the modification. Examples included recommendations of testing without specifying what type of test to perform. The inspector was informed that the modification is scheduled for the next refueling outage which would give the licensee enough time to complete the modification package for final approval to work.

b. 4160 V Safety Related Switchgear

The inspector determined that the surveillance test procedure with respect to Technical Specification requirements for under voltage and degraded voltage relays was adequately written and the performance of the test showed the set points were checked and verified within the limits of the technical specifications.

c. Mechanical Systems

The inspector reviewed WRs listed in Attachment A for adequate post maintenance testing. Surveillance test procedures and completed surveillance tests performed as post maintenance tests, listed in Attachment A, were also reviewed for technical adequacy, completeness, acceptance criteria, maintenance and test equipment tracking, corrective action and appropriate supervisory review and approval.

During the review of the WRs, the inspector noted that complete listings or descriptions of post maintanence testing were not always provided on the WR cover sheet. In some cases, only one of several applicable procedures would be referenced. In other cases, no specific procedure was referenced. These discrepancies involved WRs issued prior to and during the 1986 refueling outage. The inspector was able to verify documentation of adequate testing for all cases except as noted below.

Backup Scram Valve Testing

In a July 31, 1984 letter to NRC in response to GL 83-28, Item 4.5.1, NMPC provided a justification for not performing on line functional testing of backup scram valves. In a letter dated December 31, 1984, as a result of their evaluation, the licensee advised that they would perform a qualitative test of the backup scram valves during each refueling outage.

The test involves interrupting power to the valves and monitoring the system upstream header pressure to ensure that the valves function properly. The inspector reviewed N1-ISPC-44.2B, Qualitative Test of the Backuup Scram Valves, including data from the first (4/13/86) performance and found it acceptable except for a typographical error in the identification of Annunciator Window F-3-3-2. A temporary procedure changes was issued to correct the error.

The inspector also noted that the licensee uses N1-IMP-44.2, CRD Scram Valves Timing, to insure the proper operation of the scram valves after maintenance on either the scram pilot valve solenoids or the scram valve. The licensee informed the inspector that as a preventative maintenance measure, one half of the pilot and backup scram solenoid valves are repaired or replaced during each refueling outage. The inspector reviewed various WRs listed in Attachment A for performance results of the valve timing after maintenance and no discrepancies were identified.

Control of Measurement and Test Equipment (M&TE)

The inspector reviewed calibration and usage information for a sample of M&TE used on safety related components by the I&C and Maintenance Departments.

The Maintenance Department appeared to be controlling M&TE in compliance with the site administrative procedures.

Administrative Procedure AP-8.4, Procedure for Control and Calibration of Equipment Used in Tests and Inspections, requires that the calibration records for such equipment be maintained at the facility. The I&C Department was unable to provide the inspector with a calibration data sheet for a Transmation Minitemp Calibrator, Serial Number 18497, previously used on safety related equipment. The licensee stated that the calibration had been performed off site and had the data sheet, dated April 16, 1986, forwarded to the site after the inspector's request.

Failure to maintain the above calibration record onsite in accordance with AP-8.4, Section 6.3.1, is an example of failure to follow site administrative procedures (50-220/86-13-05).

AP-8.4, Section 6.3.2, also requires that, between M&TE calibrations, all plant devices calibrated or tested by a piece of M&TE must be recorded in a usage log. Gould Recorder, Serial Number 1155, was used for at least thirteen performances of scram valve timing tests on November 4, 1985. The inspector reviewed the calibration/usage log for the Gould Recorder and determined that the above usage for scram valve testing was not logged. This constitutes a further example of failure to follow AP-8.4 (50-220/86-13-05).

While examining the above recorder, the inspector noted that the individual recorder channel modules (RMS, DC, frequency, etc.) appeared to be individually calibrated and each bore an individual calibration sticker and calibration due date.

I&C personnel informed the inspector that the modules were returned to the vendor for calibration with the recorder but that the modules were also interchanged with other recorders when needed to support tests requiring different recorder configurations. Individual module usage is not recorded on either plant procedure data sheets nor the calibration/usage log. The licensee was unable to substantiate prior usage of individual recorder modules for safety related activities.

Failure to maintain the calibration/usage log for each individually calibrated module is another example of failure to follow site adminsitrative procedure AP-8.4 (Section 6.3.2). (50-220/86-13-05)

Pump and Valve Inservice Testing

Periodic and post maintenance testing of pumps and valves is administered, in part, by the licensee's Pump and Valve Inservice Test (IST) Program. The inspectors reviewed implementation of this program's requirements for selected pumps and valves in the Shutdown Cooling, Emergency Cooling, and HPCI System.

The licensee's IST Program, Revision 4, for the first 120 month inspection interval (since initial plant operation), concluded at the end of the 1986 refueling outage on June 20, 1986. This program was based upon Section XI of the ASME Boiler and Pressure Vessel Code, 1974 Edition, Summer 1975 Addenda and is required by Technical Specification 4.2.6.

The IST Program, Revision 7, for the second 120 month interval (beginning June 20, 1986) is based upon the 1983 edition, Summer 1983 Addenda, of ASME Section XI.

Both Revisions 4 and 7 of the IST Program had been submitted to NRC:NRR for approval; approval had not been granted at the time of this inspection. The licensee had implemented the programs pending approval. Further discussion of licensee implementation and administration of the programs is provided below.

Emergency Cooling System Valves

Emergency Condenser Condensate Return Valve 39-06 (and its sister valve 39-01 in the #11 Train) are air-to-close, spring-to-open, normally closed isolation valves in the reactor condensate return line from the ECS isolation condensers.

TS 3.7.2 lists the valves as Reactor Coolant Isolation valves that are required to open on an ECCS initiation signal and to close automatically to isolate the reactor on indication of an ECS downstream piping rupture.

The IST Program, Revision 4, Pump and Valve List Section, Page A-20, lists valves 39-01 and -06 as ASME XI Category A valves. Category A valves are those for which seat leakage is limited to a specified maximum amount in the closed position for fulfillment of their function .

ASME Section XI, Article IWV 3420 requires seat leakage testing of Category A valves at each refueling outage but not less than once every two years. Consistent with this requirement, IST Program, Revision 4, specifies the performance of periodic leak rate testing. This categorization is consistent with the valves' Reactor Coolant isolation valve functions. However, IST Program, Revision 4, Table C1, Test Schedule, Page 8, lists the valves as Category B (valves for which seat leakage is inconsequential for fufilliiment of their function). This categorization appears erroneous.

The licensee was unable to demonstrate that individual seat leakage tests had been performed on either valve. The licensee demonstrated that the valves had been tested as boundary valves during a 5/29/84 containment integrated leak rate test per 10 CFR 50, Appendix J and stipulated that this latter test met the testing requirements for the valve. Further, the licensee maintained that the normally shut valves are exposed to reactor pressure during normal operations and that any leakage under those conditions is readily apparent. The inspector noted, however, that under the above conditions, the valves are not necessarily exposed to rated pressure across the valve seats.

Further, the second 120 month IST Program, Revision 7, includes both a valve seat leakage test requirement and a relief request to preclude testing valves 39-01 and 39-06. The relief request is based upon a 10CFR50 Appendix J, TS Change Request (dated August 27, 1984) currently pending with NRC to exclude these valves from Appendix J, Type C local leak rate testing.

The inspector stated to the licensee that: (1) the above exemption request had not yet been approved by NRC and therefore could not be implemented without formal written relief from NRC; (2) the Appendix J test requirements are exclusive of and are derived from technical bases that are different from the requirements of ASME XI; and (3) under the requirements of ASME XI, the valves must be considered as reactor coolant isolation valves requiring demonstration of seat integrity.

Failure to periodically test valves 39-01 and 39-06 constitutes a violation of TS 4.2.6 and the IST Program requirements (50-220/86-13-06).

Shutdown Cooling System Valves

Shutdown Cooling loop isolation valves 38-01, 38-02, 38-12, and 38-13 are also listed as Reactor Coolant Isolation Valves in TS 3.2.7.

The valves are identified as Category A valves in the IST Program Revision 4, Field Change 8. Prior to Field Change 6 the valves were subject to seat leakage testing.

The IST Program specified that they be tested per 10 CFR 50, Appendix J as they were then considered to perform the dual role of both containment and reactor coolant isolation valves. (NRC will, on a case basis, accept Appendix J, Type C, testing as an equivalent to the leak testing of ASME XI).

However, on May 31, 1985, the licensee issued Field Change 6 to the IST Program, Revision 4, deleting the leak rate test requirements based upon the submitted but unapproved August 27, 1984 10 CFR 50, Appendix J, TS Change Request to NRC.

Based on the above Field Change, no seat leakage testing required by ASME XI has been performed on the valves corresponding to either of the valve's dual roles as containment and reactor coolant isolation valves. Deletion of the seat leakage testing requirements and failure to perform the seat leakage testing on the subject valves consitutes a second example of the violation of TS 4.2.6 (50-220/86-13-06).

Further, valve 38-12 is a swing check valve. Both Revisions 4 and 7 of the IST program provide for valve exercise testing in only the forward flow direction. In its role as a reactor coolant isolation valve, 38-12 is required to seat in the reverse flow direction consistent with ASME XI, Article IWV3410 (1974/75 Code) and Article IWV 3412 (1983 Code).

The licensee conducts forward flow check valve exercise testing of 38-12 by verifying system flow during normal system operation in accordance with Operating Procedure OP-43. However, no provisions for reverse flow exercise testing the valve have been established or implemented. This is a third example of the violation of TS 4.2.6 (50-220/86-13-06).

Overall Program Implementation

As noted above, NRC:NRR approval for the IST Program has not been granted. By NPMC letter to NRC (Mangan to Zwolinski) dated December 11, 1985, the licensee forwarded Revision 7 of the program and stated that the "second 120 month interval is scheduled to begin after the 1986 refueling and maintenance outage".

At the time of this inspection, the licensee had not fully implemented the program although the above outage concluded on about June 20, 1986. For example, the program provides for testing of the Shutdown Cooling Pumps. The licensee advised that the procedures for these tests were under preparation and not yet implemented.

The acceptability of overall program implementation and its approval status remains unresolved and has been referred to NRC management for review and disposition. (50-220/86-13-07)

Feedwater/HPCI Pump Testing

During the review of post maintenance surveillance testing, several discrepancies were identified in the licensee's implementation and documentation of the testing.

During 1980 - 1986 the licensee performed extensive and varied maintenance on the motor driven main feed (HPCI) pumps. For the #11 pump, this included replacement of the impeller in 1980 with a new design. During testing following another major overhaul during July, 1986, the licensee found that the #11 pump's performance no longer matched the existing pump performance curve, apparently as a result of the modified impeller and other maintenance and modification over the five year period.

TS 4.1.8 requires that the HPCI pumps be demonstrated operable but provides no quantitative acceptance criteria. Licensee procedures N1-ST-Q3 and N1-ST-IC5 (see Attachment A) are used to demonstrate compliance with TS 4.1.8 and provide quantitative acceptance criteria for total flow (3800 gpm at rated pressure) and agreement with the pump performance curves. These procedures' acceptance criteria were established in accordance with the TS Bases for 4.1.8.

Because the pump could not meet the procedure and TS Bases criteria, the licensee obtained informal NRC:NRR concurrence (NMPC Memo 6706I, Attachment A) to consider only total delivered flow (3800 gpm) as a demonstration of pump operability pending receipt of new pump curves from the pump vendor.

On July 14, 1986, data was collected for both the #11 and #12 HPCI pumps to demonstrate compliance with TS 4.8.1, apparently without the use of either surveillance procedure (above) nor any other formal procedure. The data was recorded in the shift log. The licensee was unable to explain why the existing surveillance procedures had not been revised to reflect the new, though temporary, acceptance criteria and then used for performance of the surveillance.

TS 6.8.1 and Administrative Procedure 4.0, Administration of Operations, require that all operations shall be conducted in accordance with approved procedures. Conduct of the above surveillance activities without the use of an approved procedure constitutes one example of violation (50-220/86-13-08).

The inspector reviewed the above data, including verification of the licensee's calculated conversions and adjustments for pump head, fluid density, and mass flow. Updated pump curves based on analytical data had since been received and were also reviewed by the inspector. No further discrepancies were identified.

On June 18, 1986, procedure N1-ST-C3, Automatic Startup of HPCI System, was performed to demonstrate compliance with TS. 4.1.8a as part of the outage restart activities. The procedure Data Sheet, Return To Normal section (corresponding to procedure Section 8.0) provides for recording the "return to service" Feedwater System and Condensate System alignments. This section would typically be completed to document the overall system status upon completion.

For the June 18 performance, this section was initialed by the operator as complete and the entire procedure was signed off as satisfactory but no system lineup status was recorded.

This failure to record system lineup constitutes a second example of a violation of TS 6.8.1 and AP-4.0 for failure to properly implement procedures (50-220/86-13-08)

Containment Spray Raw Water Pump Testing

During the 1986 outage, the Raw Water Pump #112 underwent a major overhaul. Procedure N1-ST-Q6, Containment Spray and Raw Water Pump Operability Test, was performed on August 14, 1986 to demonstrate compliance with TS 4.1.7 and to collect inservice test and related data. Procedure Section B.2.b.(4) requires observation of Raw Water Pump #112 motor current and provides an acceptable range of 54-66.5 amps.

During the above performance, a motor current of 70 amps was observed. The operator annotated the procedure acknowledging the unsatisfactory data, indicating that it was likely due to a change in the pump/motor characteristics following overhaul. The procedure was signed off by the operator as "satisfactory, corrective action required" and "Step B-2-4-b - need an update on amps". No supervisory or engineering evaluation of the data was evident nor had the procedure been revised during or after the test to reflect a new baseline for the motor operating current.

The motor current acceptance criteria and the trending of motor current are not specific regulatory requirements, (i.e. not required by license conditions or regulation). However, the licensee had established them as criteria for satisfactory completion of the procedure demonstrating normal pump operation.

Signoff of the procedure with unacceptable data and/or without resolution via a procedure revision is a third example of a failure to properly implement procedures (50-220/86-13-08).

d. Instrumentation and Control

Maintenance and surveillance activities for the equipment listed in Section 3.2 were reviewed to verify adequacy of post maintenance testing. In all cases reviewed, post maintenance testing was found to be thorough, adequate, and complete. Those work requests reviewed are listed in Attachment A.

e. Trending and Corrective Action

Trending of equipment failures, malfunctions, and maintenance is performed on an annual basis in accordance with Administrative Procedure AP-5.0, Procedure for Repair., The key plant departments are required to conduct a review of inservice test and inspection, corrective and preventive maintenance activities for similar failures, high failure incidence rates, etc. The departments then issue a report of their results and recommendations.

The Technical Superintendent then reviews the departmental reports and makes recommendations for program or equipment improvements to the Operations Assessment Committee for review and assignment. Assignment items are administered as Site Operations Review Committee (SORC) action items, and are tracked on a computerized open items listing and are required to be formally closed by the submittal of completed actions to the SORC. The inspector reviewed the reports for the Maintenance, I&C, and Computer Department and discussed the status of the licensee's review with the Technical Support Supervisor.

The inspector noted that the licensee also maintains an active participation in the INPO Nuclear Plant Reliability Data System (NPRDS). The licensee has used the NPRDS data for specific failure studies and reviews but does not include an overall review of the plant specific or generic NPRDS data as part of the annual review per AP-5.0. In response to the inspector's comments, the licensee reviewed the above practices and issued NMPC Memo NMP-20379 (Attachment A) directing how NPRDS data is to be incorporated in the annual reviews.

The inspector also reviewed other relevant programs which evaluate potential problem trends. Technical Support Services performs reviews of Occurrence Reports, NPRDS Input, reports to NRC and other operations assessment mechanisms and reports apparent trends and recommendations to the SORC. These items are tracked by SORC as open action items.

The inspector reviewed the computer listing of SORC open items, finding that several dozen items remained open from 1982 - 1985. These items were not necessarily trending or operations assessment items but spanned many aspects of SORC activity.

Typical examples included:

SORC Item No.	Title
82-86	Need test schedule for CO2 and Halon Systems
83-38	Need procedure change to exercise switches
84-109	Verify that procedure for scram solenoids contains caution for use of loctite
83-44	Tech Spec change needed for containment atmosphere post LOCA vent line modification
83-42	SE on Emergency Condenser mods will require changes in FSAR & procedures

The Technical Superintendent demonstrated that the items remaining from 1982 - 1985 had not been formally closed pending assembly of documentation packages and that all the actual required actions had apparently been completed. One individual had been assigned to prepare the documentation packages and another to verify their completeness and close each item.

6. QA/QC Interface

A Senior Supervisor - Audits and eight auditors, and a Supervisor - QA Services with a staff of six report to the Manager, Corporate Quality Assurance. An onsite Supervisor and seven auditors report to the offsite Senior Supervisor - QA Audits. This group is responsible for conducting audits required by Technical Specifications and the QA Program except for those associated with vendor evaluation and control.

A Supervisor - Quality Engineering and fifteen engineers, Supervisor - Materials and Reliability Engineering with a staff of seven report to the Manager, Quality and Reliability Engineering. The Procurement Quality sub-group is responsible for vendor surveys and evaluations, annual reevaluations, and vendor visits to inspect or conduct surveillances. They also establish and maintain the approved vendor list that is distributed as a controlled document.

The Supervisor - Quality Control and twelve inspectors, and Supervisor - Operations Surveillance with a staff of seven (for Unit 1) report to the onsite Manager, Nuclear QA Operations. The QC group is responsible for performing the inspection/witness points that are established in work procedures or WRs. The Operations Surveillance group conducts a second level monitoring/observation of ongoing activities such as maintenance, modification installation, and QC first level inspections.

The managers of the above three groups and a Manager, Non-Nuclear QA Operations report to the Vice President, Quality Assurance who reports directly to the President of the company.

Audits were conducted on functional areas that were reviewed during this inspection. Checklists were used, deficiencies were followed up, and the audits were completed within the general framework of the schedule.

The Qualified Contractor List (approved vendors) was controlled and maintained. A sample of four vendors asssociated with the purchase orders listed in Attachment A were on the list, had been surveyed, evaulated, and reevaluated, and appropriate vendor visits conducted. Those WRs (Attachment A) classified as safety related had QC Group involvement as evidenced by the inspections and observations documented on Quality Control Inspection Checklists (QCIRs). Also, the QA Surveillance group conducted some second level overview of the functional areas reviewed during this inspection.

No violations were identified.

7.0 Unresolved Items

Unresolved items are matters about which more information is required in order to ascertain whether they are acceptable, deviations or violations. Two unresolved items were identified during this inspection and are discussed in paragraphs 4.2 and 5.2.c.

8.0 Management Meetings

Licensee management was informed of the scope and purpose of the inspection at an entrance meeting conducted September 10, 1986. The findings of the inspection were discussed with licensee representatives during the course of the inspection. An exit meeting was conducted September 19, 1986 at the conclusion of the inspection (see Paragraph 1 for attendees) at which time the licensee management was informed of the inspection results. At no time during this inspection was written material provided to the licensee.

ATTACHMENT A

1.0 References/Requirements

NRC Generic Letter 83-28, "Generic Implications of Salem ATWS Events"

10 CFR 50, Appendix B

PNPS Technical Specifications

FSAR

Quality Assurance Program

ANSI N18.7-1972, Administrative Controls and Quality Assurance for the Operational Phase of Nuclear Power Plants.

ANSI N45.2.2-1972, Packing, Shipping, Receiving, Storage and Handling of Items for Nuclear Power Plants.

ANSI N45.2.12-1974, Requirements for Auditing of Quality Assurance Programs for Nuclear Power Plants.

ASME Boiler and Pressure Vessel Code Section XI, 1974 edition thru summer of 1975 addenda, and 1983 edition with addenda.

NMPC Ltr to NRC:NRR, GL 83-28 Supplemental Response and Schedule Update, dated 7/31/84

NMPC Ltr to NRC:NRR, Status Update - GL 83-28 Items, dated 4/30/84

NMPC Ltr to NRC:NRR, Status Update - GL 83-28 Items, dated 2/29/84

NMPC Ltr to NRC:NRR, Responses to GL 83-28, Items 2.1 and 2.2.2, dated 9/4/84

1.0 References/Requirements Continued

NRC Safety Evaluation, Generic Letter Items 3.1.1, 3.1.2, 3.2.1, 3.2.2, 4.5.1 for NMP-1 dated March 3, 1986

NMPC Ltr to NRC:NRR, Status of GL 83-28 Items, dated 12/31/85

NMPC Ltr to NRC:NRR, Clarification to Responses to GL 83-28 Items 2.1, 2.2, 3.1.3, 3.2.3 and 4.5.3, dated 7/2/85

NMPC Ltr to NRC:NRR, Commitment for Refueling Outage Tests of Backup Scram Valves, dated 12/31/84

NMPC Ltr to NRC:NRR, Supplemental Response to GL 83-28, Items 2.1, 3.1, 2.2, dated 11/30/84

NMPC Ltr to NRC:NRR, Response to GL 83-38, dated 11/8/83.

NMPC Ltr to NRC:NRR, Schedule Extension, GL 83-28 dated 1/30/85

Corrective Maintenance Review Report - I&C, 2/11/86

Corrective Maintenance Review Report - Electrical & Mechanical, 2/17/86

Corrective Maintenance Review Report - Computer Operations & Maintenance, 1/27/86

NMPC Memo, 6706I, NRC Telecon Re HPCI Operability, 7/15/86

Worthington Pump Division Ltr, Feedwater Pumps Impeller Redesign - Estimated Pump Performance Curve, dated July 22, 1986.

NMPC Memo, MD-86182, Motor Driven Feedwater Pump Expected Performance Curves, 8/7/86

NMPC Memo, HPCI, Surveillance Testing Concerns, 8/1/86 Including Reactor Feel Pump curves (Head Flow, dP-THD, lb/hr—GPM)

1.0 References/Requirements Continued

- NMPC Memo, 7026I, Notes of Telecon with NRC Regarding Implementation of Generic Requirements and App. J. SER, 8/28/86
- NMPC Memo, 6955P, Notes of Telecon with NRC Regarding Appendix J Technical Specification Changes, 8/19/86
- NMPC Memo, 6846I, Notes of Telecon with NRC Regarding Appendix J Technical Specification Changes, 8/5/86
- NMPC Memo, 6831V, Notes of Telecon with NRC Regarding Appendix J Technical Specification Changes, 7/31/86
- NMPC Memo, 6536I, Notes of Telecon with NRC Regarding Appendix J Technical Specification Changes, 6/20/86
- NMPC Memo, 6481I, Notes of Telecon with NRC Regarding Appendix J Technical Specification Changes, 6/11/86
- NMPC Memo, 6148I, Notes of Telecon with NRC Regarding Appendix J Technical Specification Changes, 4/30/86
- NMPC Memo, 5724I, Notes of Telecon with NRC Regarding Appendix J Technical Specification Changes, 3/7/86
- NMPC MEMO, 5706I, Notes of Telecon with NRC Regarding Appendix J Technical Specification Changes, 3/8/86
- NMPC Memo, NMP 14527, Notes of Telecon with NRC Regarding Appendix J Technical Specification Changes, 10/1/85
- NMPC Memo, MNP 13821, Notes of Telecon with NRC Regarding Appendix J Technical Specification Changes, 9/11/85
- NMPC Memo, (No File #), Notes of Telecon with NRC Regarding Appendix J Technical Specification Changes, 4/16/85
- NMPC Memo, (No File #), Notes of Telecon with NRC Regarding Appendix J Technical Specification Changes, 4/11/85
- IE Info Notice 86-78, Scram Solenoid Pilot Valve (SSPV) Rebuilt Kit Problems, 9/2/86

1.0 References/Requirements Continued

- IE Info Notice 86-71, Recent Identified Problems With Limitorque Operators, 8/18/86
- IE Info Notice 86-34, Improper Assembly, Material Selection, And Test of Valves And Their Actuators, 5/13/86

2.0 Documents Reviewed

2.1 Procedures/Tests

Nine Mile Point Unit 1 Q-List, Revision B

AP-3.4.2, Operations Experience Assessment, Revision 2

TDP-5, Administration of Operations Engineering Assessment Items, Revision 1

TDP-8, Post Maintenance Testing Criteria, Revision 1

DC1-4, Instruction for Control of Station Manuals, Revision 3

N1-1CP-C-FWC-2, FW System Reactor Level Calibration, Revision 0 Performed 6/7/86

N1-1MP-38, Shutdown Cooling Calibration, Revision 4, Performed 6/10/86

N1-1MP-39, Emergency Cooling Timer Maintenance, Revision 0, Performed 3/29/86

N1-1SP-M-36, Lo^2 & Lo^3 Rx Level, Revision 0, Performed 8/18/86

N1-EPM-GEN-R-120&21, Limitorque Valve & MCC Inspection, Revision 0, Performed 6/11/86

N1-EMP-27.7, Maintenance of SDC Pump Motors, Revision 0

N1-EMP-44.18, Limitorque Preassembly of Type SMB&SB, Revision 2, Performed 5/24/86

N1-EMP-44.26, Replacement of HFA Relays, Revision 0, Performed 3/13/86

N1-NMP-6.2, Overhaul of CRD, Revision 0

N1-MMP-6.3, Installation of CRD, Revision 1

N1-MMP-8.1, Overhaul of SDC Pumps, Revision 0

N1-MMP-8.2, Maintenance of SDC Valves, Revision 0

N1-MMP-8.3, Maintenance of SDC Valves, Revision 0

N1-MMP-8.4, Maintenance of SDC Valves, Revision 0

N1-MMP-8.5, Maintenance of SDC Valves, Revision 0

N1-MMP-9.1, Maintenance of Emergency Condenser Steam Isolation Valve, Revision 0

AP-8.4, Procedure for Control and Calibration of Equipment used in Tests and Inspections, Revision 4

N1-MMP-9.2, Maintenance of Emergency Condenser DC Motor Operated Steam Isolation Valves, Revision 0

N1-MMP-9.3, Overhaul of Emergency Condenser Condensate Isolation Valves

AP-5.0, Procedure for Repair, Revision 7

AP-4.0, Administration of Operations, Revision 6

AP-2.0, Protection and Control of Procedures, Revision 6

AP-3.4.1, Administration of Technical and Safety Reviews, Revision 0

S-MI-GEN-002, Maintenance Instructions for Writing Procedures, Revision 0

S-IDP-PO, Outline for I&C Procedures, Revision 6

TDP-6, NPRDS Failure Reporting, Revision 1

TDP-9, Independent Safety Engineering Group, Revision 0

NEL-0146, Control & Distribution of Vendor Documents, Revision 0

AP-8.1, Preventive Maintenance

AP-10-2.2, Procedure for Reporting Variations From Normal Plant Operations, Defects and Noncompliances, Revision 1

N1-EPM-C16, Data Sheet, Protective Relay Setting & Testing Checklist, Revision 7, Performed 2/11/86, 1/24/86

PTP-232.66, Preoperational Test - Replacement of RPS HFA Relays, 4-111A/40 and 4-111B/40, Revision 0, Performed 3/20/86

AP-8.5, Housekeeping and Cleanliness Contract, Revision 1

N1-ST-C3, Automatic Startup of HPCI, Revision 2, Performed 6/15/86 and 6/18/86

Containment Spray System Description, Revision 0

Feed Water/HPCI System Description, Revision 0

Shutdown Cooling System Description, Revision 0

Emergency Cooling System Description, Revision 1

Control Rod Drive Hydraulic System Description, Revision 0

1986 Occurrence/LER Log (Nos. 86-01 to 86-1542)

SORC Open Item List, dated 9/11/86

N1-ST-ICS, HPCI Surveillance with Inoperable Component Test, Revision 3, Performed 7/1/86

N1-ST-Q3, HPCI Pump Operability Test, Revision 1, Performed 8/12/86

N1-MMP-7.1, Overhaul of Electrical FW Pumps Data Sheet, Performed 7/4-13/86

POT-223.12, Replacement of RPSHFA Relay 12K6, Revision 0, Performed 3/18/86

POT-223.60, Replacement of RPSHFA Relay 11K23, Revision 0, Performed 8/18/86

POT-223.9, Replacement of RPSHFA Relay 11K5, Revision 0, Performed 8/18/86

POT-232.11, Replacement of RPSHFA Relay 12K5, Revision 0, Performed 3/14/86

POT-233.10, Replacement of RPSHFA Relay 11K6, Revision 0, 3/13/86

N1-EPM-V6, Visual Inspection of HFA Relays for SIC 44, Revision 2 and IE Bulletin 84-02, Revision 1

N1-EPM-V5, Procedure for Testing MOV's Utilizing MOVATS, Revision 1

N1-ST-Q2, CRD Pumps Flow Rate Check, Revision 4, Performed 8/18/86

N1-ST-Q6, Containment Spray and Raw Water Pumps Operability Test, Revision 18, Performed 8/14/86

N1-ST-R1, Control Rod Scram Insertion Time Test, Revision 7, Performed 8/8/86

N1-1CP-Q-80, Containment Spray Flow and Pressure Calibration, Revision 5, Performed 5/14/86 and 8/8/86

N1-1MP-44.2, CRD Scram Valve Timing, Revision 0, Performed 5/10/86 and 8/25/86

N1-1SP-C-25.3, Local Leakage Test Containment Spray Raw Water Heat Exchanger, Revision 5, Performed 3/11/86 and 5/20/86

N1-MMP-13.1, Maintenance of Containment Spray Pump, Revision 1, Performed 3/20/86 and 4/2/86

N1-MMP-13.6, Maintenance of Containment Spray Heat Exchangers, Revision 0, Performed 5/25/86

N1-MMP-13.7, Maintenance of Containment Spray Valves, Revision 0, Performed 4/2/86 and 5/10/86

NMP-13.4, Maintenance of Containment Spray Inlet Isolation Valves, Revision 0, Performed 5/12/86 and 3/28/86

N1-IMP-SOV-3, Repair/Replacement of Miscellaneous Solenoid Operated Valves, Revision 0

N1-IMP-SOV-2, Repair/Replacement of CRD Scram Pilot Solenoid Valves, Revision 0, Performed 5/3/86

N1-IMP-SOV-1, Replacement/Repair of Solenoid Operated Valves Which Control Primary Containment Isolation Valves, Revision 1

N1-ISP-C44.2B, Qualitative Test of the Backup Scram Valves, Revision 0, Performed 4/13/86

DCI-1, Station Incoming/Outgoing Correspondence Control Instruction, Revision 2

DCI-3, NMP Drawing Control Instruction, Revision 7

DCI-4, Instructions For Control Of Station Manuals, Revision 3,

ND-100, Plant Modifications, Revision 1

ND-160, Drawing Change Control, Revision 0

ND-220, Plant Configuration Verification, Revision 0

TDP-8, Post Maintenance Testing Criteria, Revision 1

N1-IMP-38, Shutdown Cooling, Revision 4

N1-ST-Q7, Manual SCRAM Instrument Test, Revision 6

N1-EST-C5, Emergency Undervoltage Relay Surveillance Test, Revision 1

APN-9, Procedure For Station Permanent and Temporary Modifications and Replacement, Revision 3

APN-17, Management of Station Records, Revision 5

N1-EPM-C12, Type AK Breaker/Motor Inspect and Breaker Load Test, Revision 2

2.2 Vendor Manuals

Valve No.	Valve Model	Limitorque Operator
38-01&13 AC	Grave Model 900	SMB-2
38-02 DC	Grave Model 900	SMB-3
38-09/10/11 AC	Fisher Type 657AR	
31-07/08	Rockwell Class 900	SMB-2
31-01/02	Chapman #SP923	
SO117/118	ASCO HVA 90 4052A	

Pumps

NU-02A/B/C	Pacific Model HVCH
FWP 11 & 12	Worthington 8WNC-141

2.3 Prints/Drawings

18012-C, Reactor Containment Spray System, Sheet 2, Revision 13
18016-C, Control Rod Drive, Sheet 1, Revision 13
18016-C, Control Rod Drive, Sheet 2, Revision 11
22008-C, Control Rod Drive Interconnection Wiring Diagram, Sheet 1, Revision 8
22008-C, Control Rod Drive Interconnection Wiring Diagram, Sheet 2, Revision 3
22008-C, Control Rod Drive Interconnection Wiring Diagram, Sheet 3, Revision 5
22008-C, Control Rod Drive Interconnection Wiring Diagram, Sheet 4, Revision 4
18017-0, Emergency Cooling System, Revision 24
18018-C, Reactor Shutdown Cooling, Revision 10
18005-C, Feedwater Flow H.P., Sheet 1, Revision 11
18005-C, Feedwater Flow H.P., Sheet 2, Revision 13
19859-C, Reactor Protection System Trip Diagram, Sheet 1, Revision 9

19859-C, Reactor Protection System Elementary Wiring Diagram, Sheet 2, Revision 27
19859-C, Reactor Protection System Elementary Wiring Diagram, Sheet 5, Revision 26
19859-C, Reactor Protection System Elementary Wiring Diagram, Sheet 6, Revision 21
19859-C, Reactor Protection System Elementary Wiring Diagram, Sheet 8, Revision 31
19859-C, Reactor Protection System Elementary Wiring Diagram, Sheet 8A, Revision 8
19859-C, Reactor Protection System Elementary Wiring Diagram, Sheet 9, Revision 16
19859-C, Reactor Protection System Elementary Wiring Diagram, Sheet 10, Revision 19
19859-C, Reactor Protection System Elementary Wiring Diagram, Sheet 10A, Revision 5
19859-C, Reactor Protection System Elementary Wiring Diagram, Sheet 17, Revision 11
C-19408-C/2, One-line Diagram Main and Secondary Connections, Revision 19
C-19409-C/1A, One-line Diagram Auxiliary System (Powerboards), Revision 3
C-19409-C/3, One-line Diagram 4160V Emergency Boards 102/103, Revision 20
C-19410-C/11, 4.16kV Emergency Powerboard and DG #102 UV Relays, Revision 5
C-19410-C/12, 4.16kV Emergency Powerboard and DG #103 UV Relays, Revision 5
C-34122-C/1, Aux Control Cab 1S48 ATWS Channel #11, 3/9/82, Revision 2
C-34122-C/1, Aux Control Cab 1S48 ATWS Channel #11, 8/29/82, Revision 4
C-34122-C/1, Aux Control Cab 1S48 ATWS Channel #11, 7/1/86, Revision 3
C-34122-C/2, Aux Control Cab 1S48 ATWS Channel #12, 8/29/82, Revision 4
C-34122-C/2, Aux Control Cab 1S48 ATWS Channel #12, 7/1/86, Revision 3
C-34122-C/2, Aux Control Cab 1S48 ATWS Channel #12, 3/9/82, Revision 2
C-34814-C/1, Remote Shutdown Panel #11, Revision 5

C-34814-C/2, Remote Shutdown Panel #11, Revision 9

C-34814-C/3, Remote Shutdown Panel #12, Revision 5

C-34814-C/4, Remote Shutdown Panel #12, Revision 7

C-34816-C/2, Remote Shutdown Panel #12, Revision 3

C-34816-C/4, Remote Shutdown Panel #12, Revision 1

C-34816-C/5, Remote Shutdown Panel #12, Revision 0

C-34816-C/6, Remote Shutdown Panel #12, Revision 1

2.4 Work Requests

37171, Replace HFA Relays - CS Valve & Recirc Pump Trip, 4/15/86
14168, Repair Limitorque Operators, 32-NG(08 B), 5/26/86
10582, Replace CRD 26-23 & Position Indicator, 4/25/86
100168, Repair #11 MDFP-Failed HPCI Head/Flow Test, 7/14/86
014341, Recirc Valve 30-31 Would Not Stroke During HPCI Test, 5/17/86
010238, Overhaul #12 MDFP, 3/86
023454, Overhaul #12 MDFP, 5/86
37070, Replace HFA Relays 11K5, 3/31/86
37065, Replace HFA Relays 11K23, 3/13/86
37150, Replace HFA Relays 12K6, 3/14/86
37097, Replace HFA Relays 11K6, 3/13/86
32408, HCU 14-19 Scram Outlet Valve CV127, Diaphram Leak, 4/29/85
32893, Core Spray Topping Pump 111, Inspection, 3/1/86
34415, Core Spray Pump 111, Heater Repair, 8/27/85
32158, Containment Spray Pump 121, Rebuild, 12/17/85
32686, Containment Spray HX 111, Weld Repair, 5/12/85
32689, Containment Spray HX 121, Weld Repair, 5/20/85
32713, Containment Spray HX 111, Weld Inspection, 6/1/85
010056, Containment Spray HX, 121, Head Removal, 3/13/86
014456, Containment Spray HX 121, End Plate Removal For Tube Test, 5/28/86
010231, Containment Spray Block Valve 80-11, Leaking, 5/30/86
32172, HCU 42-19, Scram Pilot Valves 117/118, Rebuild, 11/4/85
30776, HCU 50-27, Scram Pilot Valve 117, Rebuild, 3/5/85
32173, HCU 42-23, Scram Pilot Valves 117/118, Rebuild, 11/4/85
32174, HCU 42-27, Scram Pilot Valves 117/118, Rebuild, 11/4/85
32176, HCU 42-35, Scram Pilot Valves 117/118, Rebuild, 11/4/85
32175, HCU 42-31, Scram Pilot Valves 117/118, Rebuild, 11/4/85
32177, HCU 46-23, Scram Pilot Valves 117/118, Rebuild, 11/4/85
32178, HCU 46-35, Scram Pilot Valves 117/118, Rebuild, 11/4/85
32179, HCU 42-39, Scram Pilot Valves 117/118, Rebuild, 11/4/85
32180, HCU 42-43, Scram Pilot Valves 117/118, Rebuild, 11/4/85
32181, HCU 26-51, Scram Pilot Valves 117/118, Rebuild, 11/4/85
32182, HCU 22-51, Scram Pilot Valves 117/118, Rebuild, 11/4/85
32183, HCU 26-47, Scram Pilot Valves 117/118, Rebuild, 11/4/85
35550, HCU 38-11, Scram Pilot Valves 117/118, Rebuild, 11/4/85
010763, New Containment Spray HX 111, Cover Replacement, 5/29/86
010273, Containment Spray Pump 111, Rebuild, 6/15/86
011011, Rosemont Model 1153 Series D, E.Q. "O" Ring Replacement, 4/3/86
010987, Containment Spray Inlet IV 80-15, Binding, 4/21/86
010235, Containment Spray Inlet IV 80-16, Leaking, 4/6/86
31281, Containment Spray Valves, Leaking Solenoids, 4/17/85

010565, Containment Spray Breaker for 80-03, 5/29/86
10223, RPS Instruments (ATWS) IE Notice 85-02 Verify Prop, 3/9/86
10778, Replace O-Rings On Transmitter PT 36-21C ATWS, 3/18/86
13877, Re-brush MG-set 162, 6/16/85
14094, RSP #11, Replace barriers & SBM SW Brackets, 9/17/86
14095, RPS #12 Repair/replace Tubing For Incomming Cable, 9/17/86
14096, RPS #11 Repalce Covers On Aux Relays And SMB SWs, 9/17/86
15725, Replace Burntout 2" Relay On MG-set 172, 6/11/86
16296, ATWS Level Xmitter. Test Valve Leaks, 6/20/86
24489, Trouble Shoot Shutdown Cooling Pump #13, 3/21/84
25084, Inspect Breaker On Shutdown Cooling Pump #11, 3/20/84
25935, Investigate Breaker On Reactor Shutdown Cooling Pump, 4/5/84
31305, Re-brush MG-set 172, 2/25/85
31433, Investigate LCVs Operation From Remote Shutdown, 2/15/84
31995, Re-brush MG-set 171, 7/1/85
31997, Re-brush MG-set 162, 7/1/85
31999, Re-brush MG-set 11, 7/1/85
33060, SDV Level Instrument Does Not Work, 6/3/85
33278, Replace Whitey Valves On Transmitters 36-21, A,B,C, 6/12/85
33914, Replace Light Switch On MG-set 131, 12/9/85
34853, Re-brush MG-set 172, 9/30/85
35570, SCRAM Pump Vol Water Lvl Inspect/repair/replace, 11/16/85
35837, RSP's Rx Water Temp, Change Scales For Non-linear, 11/25/85
36033, RSP #11 Calibrate Rx Water Temp, 11/24/85
37171, Replace HFA Relays Core Spray Vlv & Recirc Pump, 2/11/86
100181, Investigate MG-set 141 For Problems, 7/6/86
100623, Replace Voltage Regulator MG-set 141, 7/17/86
105004, RSP #11 Meter Internals Missing, Replace Meter, 9/17/86
105026, RSP #12, Check Gaitronics Wiring, Write DCR If Changed
105027, RSP #11 Check Gaitronics Wiring, Write DCR If Changed
105674, Lable Cable Numbers Correctly in Rx Recir Control, 9/16/86
105675, Clean Cabinet RY21C, RY21A, RY20A, RY21D, RY20D, 9/16/86

2.5 Purchase Orders and Associated WRs

40697, HFA Relays (WR 37070)
54333, Shutdown Cooling Pump Shaft Sleeve Collar (WR 22381)
22123, Bearings (WR 22381)
94420, Flexitallic Bonnet Gasket (WR 34932)
22014, Index Tube (WR 011312)
50106, Valve Poppet (WR 34932)
94434, Lubricant (WR 011312)
74123, Cylinder and Flange Assembly Tube (WR 11312)
21632, Rods and Tubes (WR 11312)
74124, O-Rings Piston Tube (WR 11312)
87787, Scram Valve Diaphrams (WR 105641)
1-86-0369, Replacement of HFA Relays RPS-11/4-1118140, 4/6/86
1-86-1195, Overhaul of Electrical FW Pump #11, 7/4-13/86
1-86-0144, Replacement of HFA Relay 11KS

1-85-257, Replacement of Air Diaphram on Scram Outlet Valve on HCU 14-19, 4/29/85
1-85-269, Containment Spray HX 111, Weld Repair, 5/13/85
1-85-276, Containment Spray HX 111, Weld Examination, 5/31/85
1-86-0134, Containment Spray HX 121, Head Removal, 3/12/86
1-86-1037, Containment Spray HX 121, End Plate Installation, 5/27/86
1-86-1003, Containment Spray Block Valve 80-11, Picking Replacement, 5/25/86
1-85-0474, HCU 42-19 Scram Pilot Valve 117/118, Rebuild, 11/4/85
1-86-0402, New Containment Spray HX 111, Cover Replacement, 4/9/86
1-86-0287, Replace "O" Rings in Signal Transmitters, 4/4/86
1-85-121, SOV for 80-35 Replacement, 4/16/86

2.7 Audits/Vendor Control

SY-RG-IN-86003, Syracuse Nuclear Technology
SY-RG-IN-86011, Implementation of NRC Generic Letter 83-28, Salem ATWS Event
SY-RG-IN-85014, Nuclear Design Engineering
SY-RG-IN-86006, CPS Electric
SRAB Audit B, Operations Activities
GE Wilmington Nuclear Energy Products Division (survey, evaluations, visits, etc.)
GE Power System Management Business Department (visits, etc. at corporate offices and three manufacturing locations)
Worthington Pump Corporation (visits, etc.)

2.8 Design Change Requests

N1Y86MX001LG040, RSP #12 Correct drawings for field installation, 9/18/86

2.9 Training

NMP Unlicensed Operators training Curricula/schedule 1984, Revision 0

ATTACHMENT 5

DRP [illegible]

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
631 PARK AVENUE
KING OF PRUSSIA, PENNSYLVANIA 19406

19 NOV 1986

Docket No. 50-410

Niagara Mohawk Power Corporation
ATTN: Mr. C. V. Mangan
Senior Vice President
300 Erie Boulevard, West
Syracuse, New York 13202

Gentlemen:

Subject: Inspection Report No. 50-410/86-52

This refers to the special team inspection of the Nine Mile Point Unit 2 employee concerns about quality assurance (QA) program effectiveness in the area of quality control (QC) inspections and the Quality First Program (Q1P) investigation of these concerns. This inspection was conducted on September 8-12, 1986, and a summary of our findings was presented by Mr. J. C. Linville to Mr. W. Donlon and members of your staff at the inspection's conclusion. The inspection on August 6-28, 1986 by Mr. R. Gramm which brought these matters to our attention, and management meetings on August 29, 1986 at the site and on September 4, 1986 in Region I to discuss them are also summarized.

Overall the inspection validated your position that the programmatic concerns identified in the Q1P investigation have not resulted in hardware deficiencies or impeded QA department personnel from identifying hardware deficiencies. In addition, there is evidence that QA overchecks of QC inspection activities have identified and corrected hardware deficiencies.

While no violations were identified during this inspection, several new programmatic weaknesses were identified, in addition to those identified by your Q1P investigation, which require additional action to improve program effectiveness . The weaknesses are summarized in sections 1.1 and 1.2 of the enclosed inspection report. You are requested to respond to this letter providing a description of your actions relative to these weaknesses.

The response requested by this letter is not subject to the clearance procedures of the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, PL 96-511.

We appreciate your cooperation.

Sincerely,

William F. Kane, Director
Division of Reactor Projects

19 NOV 1986

Enclosure: NRC Region I Inspection Report No. 50-410/86-52

cc w/encl:
Connor & Wetterhahn
John W. Keib, Esquire
J. A. Perry, Vice President, Quality Assurance
W. Hansen, Manager of Quality Assurance
D. Quamme, NMP-2 Project Director
C. Beckham, NMPC QA Manager
T. J. Perkins, General Superintendent
R. B. Abbott, Station Superintendent
Department of Public Service, State of New York
Public Document Room (PDR)
Local Public Document Room (LPDR)
Nuclear Safety Information Center (NSIC)
NRC Resident Inspector
State of New York

bcc w/encl:
Region I Docket Room (with concurrences)
Management Assistant, DRMA (w/o encl)
DRP Section Chief
Region I SLO
D/DRS
M. Haughey, NRR, BWR Licensing
P. McKee, ORPB, IE

U.S. NUCLEAR REGULATORY COMMISSION
REGION I

Report No. 50-410/86-52

Docket No. 50-410

License No. CPPR-112 Category B

Licensee: Niagara Mohawk Power Corporation
300 Erie Boulevard West
Syracuse, New York 13202

Facility: Nine Mile Point 2

Locations: Scriba, New York
King of Prussia, Pennsylvania

Inspection Dates: August 26-28, 1986 and September 8-12, 1986

Meeting Dates: August 29, 1986 and September 4, 1986

Team Leader: J. C. Linville, Chief RPS 2C, DRP 11/4/86
date

Inspectors: Dr. P. K. Eapen, Chief, QA Section, DRS
R. Gramm, Senior Resident Inspector
J. Stair, Resident Inspector

Approved by: Robert M. Gallo
R. M. Gallo, Chief, Projects Branch 2 DRP 11/5/86
date

Inspection Summary: Inspections on August 26-29, and September 8-12, 1986 and Management Meetings on August 28, 1986, and September 4, 1986 (Report No. 50-410/86-52)

Special announced team inspection to evaluate the licensee's position that the programmatic quality assurance (QA) issues identified by Quality First Program (Q1P) concerns 86-64 A to G have not resulted in hardware deficiencies or impeded the ability of QA department personnel to identify or correct hardware deficiencies. The inspection involved review of licensee records and interviews with QA department personnel. It included 140 hours on site by 2 section chiefs, one senior resident inspector and one resident inspector.

1.0 Inspection Conclusions

1.1 The following programmatic QA weaknesses were identified by the NRC in addition to those identified by the Q1P investigation:

(1) Q1P review of QA concerns lacked active independent management involvement similar to that normally provided by offsite review committees (Section 4.0).

(2) Bypassed QC hold points were not trended for frequency, repeat offenders, or repeat by discipline (Section 6.6).

(3) QC hold points in maintenance procedures and related QC checklists were not consistent (Section 6.3).

1.2 As a result of NRC reviews the following QA program weaknesses previously identified by the licensee's Q1P investigation were clarified and confirmed:

(1) Limits on troubleshooting activities performed under Deficiency Reports (DRs) and Work Requests (WRs) are not well defined, and QA Engineering is not providing clearly established inspection attributes to QC inspectors. (Sections 5.0, 6.1 and 6.2)

(2) While QA department personnel have been adequately trained on QA procedures, there has been no formal training on implementing policy guidance disseminated by numerous memoranda. In addition, there is no vehicle in use for continuing training of new contractor personnel or on new policy guidance. (Section 5.0, 6.6 and 6.9)

1.3 None of the 26 QA department personnel interviewed by inspection team members knew of any uncorrected hardware deficiencies or believed that they had been impeded from identifying or correcting any hardware deficiencies because of programmatic QA weaknesses.

1.4 NRC reviews noted evidence that QA overchecks of QC inspection activities have been identifying and assuring correction of hardware deficiencies. (Section 7.0)

2.0 Background

2.1 QC Inspector Certification

On August 20, 1986 the NRC received allegations, that NMPC had improperly certified two QC inspectors, that NMPC QC inspectors had performed inspections outside their certified discipline, and that the NMPC Quality First Program had not been responsive. NRC Region I conducted an allegation review panel to document recipt of the concerns and determine appropriate followup actions. As a result, on

August 26 and 27 an NRC inspector reviewed NMPC QA procedures, interviewed QC personnel, reviewed QA records, and accompanied QC personnel during the conduct of inspections. Conclusions reached relative to the allegations are described in section 8.0.

2.2 Quality First Program Concern 86-64

Subsequently, on August 28, an NRC inspector reviewed Quality First Program (Q1P) records and noted concerns 86-64 A thru G, which addressed the following issues regarding NMPC QC activities:

(1) Lack of management support.

(2) Lack of supervisory guidance.

(3) Lack of procedural training.

(4) Lack of procedural adherence by Startup and Test, and QA.

(5) Inconsistent procedural implementation.

(6) Inadequate QA communication channels.

(7) Lack of QA management feedback to inspector suggestions or concerns.

(8) Premature Deficiency Report closure.

(9) Bypassed QC witness points.

The Q1P findings had been forwarded to senior NMPC management for resolution. On August 28, Region I management was informed of the above concerns regarding the NMPC QA/QC program implementation. After becoming aware of these concerns, management meetings between Region I and NMPC were held on August 29 and September 4. A list of attendees is included as Attachment 1.

NMPC concluded that while the concerns of the NMP2 employees had raised some valid programmatic concerns which were being addressed, these concerns had not resulted in any unsatisfactory hardware. These conclusions were based on Q1P interviews with all QC inspectors, both NMPC personnel and contractors, which did not identify any unresolved hardware issues. In addition, NMPC stated that the QC function was overchecked by QA audits, QA surveillances, and QA engineering. The licensee position was documented in a letter to NRC Region I dated September 1, 1986 and in Attachment 2 to this report which was presented at the September 4, 1986 meeting.

NMPC's initial corrective actions in response to the Q1P concerns included meetings between the Vice President, QA and all levels in the QA department to explain departmental policy relative to the concerns addressed and to direct field involvement of QA engineers in defining inspection criteria for troubleshooting activities.

In response to a question during the September 4, 1986 meeting regarding how the licensee could be sure that QA department personnel were not being impeded from identifying hardware issues by these programmatic weaknesses, the licensee conducted a survey of all QA department personnel with negative results as described in a September 9, 1986 letter to NRC Region I

3.0 Inspection Method and Scope

The inspectors independently evaluated the concerns of former Nine Mile Point Unit 2 (NMP2) employees related to programmatic weaknesses in quality control (QC) inspections of preoperational testing and the impact of these concerns on the acceptability of installed and tested hardware. These concerns had previously been evaluated by the licensee's Quality First Program (Q1P) as concern 86-64, which concluded that the concerns represented valid programmatic quality assurance (QA) program weaknesses but had not adversely affected the quality of the installed hardware. Also, the inspection evaluated portions of the QA program, other than QC, to determine whether their overcheck functions had been effectively performed.

The inspectors reviewed the background information developed by the Q1P investigation, interviewed a sample of NMP2 QC inspectors including contractors, NMPC QC inspectors, supervision and management, and verified the resolution of selected quality issues for which the acceptability could not be determined through the QC interview and records review process. In addition, the inspectors interviewed a sample of personnel from other QA organizational elements including NMP2 Startup/Operations Surveillance, NMP2 Quality Engineering, and NMP2 QA Audits to determine whether the programmatic weaknesses identified by Q1P in the QC group impacted the groups providing the overchecks of the QC program.

4.0 Q1P Review of Concerns 86-64 A to G

Based on a review of the files and discussions with the Q1P manager and interviewer, the Q1P review of concerns 86-64 A to G generally proceeded in accordance with QAP 16.70. The planning of the investigation of the concerns was thorough and the conclusions were sound. However, several of the QA personnel interviewed by NRC inspectors questioned the independence of Q1P in reviewing concerns relating to the QA program. The provisions to assure independent management oversight of such concerns by the Administrative Assistant to the President involved merely informing him of such activities rather than active involvement.

It is not evident that the corrective action plan, proposed by the Vice President, QA for the valid Q1P concerns, received the independent management review and approval required by QAP 16.70 before it was submitted to the NRC by letter dated September 9, 1986. However, active participation by the President and Senior Vice President in the corrective action plan after the NRC became involved is acknowledged. The licensee response to this issue will be reviewed during a subsequent inspection. (50-410/86-52-01)

5.0 NRC Interviews

During this inspection, 26 QA department personnel were interviewed by the NRC including 12 QC inspectors, 3 QA Engineers, 2 QA Surveillance inspectors, 2 QA Auditors, and 7 QA management and supervisory personnel. The interviews included questions in the following areas:

- Position Responsibilities
- Qualifications
- Training
- QA Program Effectiveness
- QC Inspection Activities
- QA Surveillance Activities
- QA Audits
- QA Engineering Activities
- Supervisory Support and Guidance
- Working relationships with other parts of QA Department
- Working relationships with other parts of the site organization
- Work experiences
- Concerns

None of the interviewees knew of any uncorrected hardware deficiencies. Only one individual believed that there could be hardware deficiencies which were not identified related to the control of troubleshooting and work activities as discussed in Sections 6.1 and 6.2. The examples discussed do not represent work on safety-related equipment without any QA/QC oversight because there were Deficiency Reports and Work Requests to cover the work, but the guidance to the workers and the inspection criteria were so non-specific that the acceptability of the work required considerable judgement and continuous QC coverage. The individual acknowledged that these issues had been appropriately dispositioned, but was concerned that work of unacceptable quality could occur when the work scope and inspection criteria are not clearly defined in troubleshooting activities. Half of the interviewees expressed this general concern without specific examples. The licensees letter of September 9, 1986 addressed the inspection criteria concern by committing to field involvement of Quality Engineers in developing inspection criteria for troubleshooting, but did not address the responsibility of the line organization to place appropriate limits on workers for such work to assure appropriate engineering review prior to work completion. The licensee response to this issue will be reviewed during a subsequent inspection. (50-410/86-52-02)

While there is evidence of formal training on QA procedures, as discussed in section 6.4, half of the interviewees in the QC group believed that the policy guidance for implementing the QA procedures was inconsistent, poorly communicated and confusing. This situation has been aggravated by reassignment of supervisory and management personnel, a reorganization which split the Quality Engineering and Quality Control functions, the turnover of many contractor QC inspectors, the transition from a rigidly defined construction QA program to a very flexible operations QA program, and the replacement of formal QA Instructions for implementing QA procedures by uncontrolled memoranda, verbal guidance or no guidance at all. Although the licensee corrective action described in the September 9, 1986 letter addressed these concerns, on a one time basis, there is no continuing program to assure that new employees receive this information or to assure that future policy changes are appropriately communicated. The licensee response to this issue will be reviewed during a subsequent inspection. (50-410/86-52-03)

Followup on specific concerns raised during the interviews is discussed in section 6.0.

6.0 NRC Followup of Q1P Concerns and Specific Interviewee Concerns

6.1 Control of Troubleshooting Activities

As documented in Q1P concern 86-64F, and discussed with an NRC inspector during an interview, a Quality Control Inspector discovered individuals cutting a hole in safety related panel No. 028 associated with the high pressure core spray system diesel generator, to install a temporary modification for preoperational testing without any documentation to support that work. The NRC inspector spoke with one Startup and Test individual and reviewed the Q1P documentation package relative to this concern. Documentation had been prepared concerning this temporary modification in advance in the form of Engineering and Design Coordination Reports (E & DCRs) 258352 and 258352A; Deficiency Reports (DRs) 11173, 17823, and 19281; Interoffice Correspondence (IOCs), ESEG 86-5-12 and 86-5-7; and Problem Report (PR) 0421 A. DR 18649 which controlled the work had been improperly signed off as completed prior to work completion leading the QC inspector to believe that no documentation covering the work existed. Although the work performed in this case was acceptable, it was not clear to the QC inspector that it would have been without his involvement.

While the finally accepted work was adequate, this is an example for which better definition of the work scope and QC inspection requirements was necessary to assure the quality of safety-related equipment.

6.2 Control of Work Activities

During an interview, the NRC was informed of a concern relating to the improper control of troubleshooting activities on a RHR service water sample pump 2SWPCAB23B. The inspector reviewed Work Request (WR) 103572, QCIR 2-86-3862 and Corrective Action Request (CAR) 86-1012. The extent to which the maintenance personnel could disassemble the component was not specified on the WR. The pump and motor were apparently disassembled without the reference to the associated vendor manual. This work was an example where direct involvement of Quality Engineers and work scope definition was necessary to specify the extent of troubleshooting activities. Without the involvement of the QC inspector, it was not clear to the concerned QC inspector that the work on the pump would have been acceptable.

This is another example of a case where the finally accepted work was adequate, but for which better definition of the work scope and QC inspection requirements was necessary to asure the quality of safety related equipment.

6.3 Inconsistent Hold Points Between QC Checklists and Maintenance Procedures

During an interview, the NRC was informed that NMPC maintenance procedures and the applicable NMPC QC checklists do not contain consistent hold points. The inspector reviewed the following checklists and procedures:

Title	QC Checklist and Maintenance Procedure No.
Overhaul of CRD Hydraulic Control Units	N2-MMP-30.3
Overhaul of Control Rod Drive	N2-MMP-30.8
Maintenance. of LPCS Pressure Pump	N2-MMP-32.2
Maintenance of HPCS Pump	N2-MMP-33.1
Maintenance of HPCS Pressure Pump	N2-MMP-33.4
Overhaul of Reactor Core Isolation Cooling Pump	N2-MMP-35.1

The inspector identified the following discrepancies:

- QC Checklist MMP-30.8 attributes 1 through 10 did not have associated QC holdpoints in the maintenance procedure MMP-30.8 data sheet.

- Attribute 2 in QC checklists MMP-32.2; 33.1, and 33.4 was not contained in the associated maintenance procedure data sheet.

- QC holdpoints in the maintenance procedure data sheets were not included on the associated QC checklists as exemplified by item 7.26.2 and 7.27.2 of MMP-30.8, and Items 7.1.14, 7.3.9, 7.3.10 and 7.5.6 of MMP-33.1.

The inspector's review confirmed the expressed concern that the QC checklists and associated maintenance data sheets are inconsistent. The licensee corrective actions in this area will be reviewed at a later date. (50-410/86-52-04)

6.4 QC Personnel Training

As a followup to QIP concerns 86-64 C and E, the inspectors interviewed site QA and QC personnel and reviewed the adequacy of training and qualification of these personnel. All these personnel were qualified to ANSI N 45.2.6 Level II. The inspector reviewed the training and qualification records of five QC personnel and verified that their education and experience levels met those specified in ANSI N 45.2.6.

Licensee Procedure QAP 2.10 (Revision 7) establishes the training requirements for QA and QC personnel. This program requires initial, on-the-job, and continued training as well as periodic reading assignments. Through a review of selected training records and technical discussion with personnel, the inspector determined that the personnel were qualified and trained in accordance with QAP 2.10, were knowledgeable in the technical requirements of the activities that they monitor, and kept their knowledge level current by completing the required reading of the procedures. In addition to the initial reading of the procedures, the personnel were required to reread these procedures when revised. The inspector noted that the reading was required by the supervisors and proficiency was verified by the supervisors or lead personnel. Adequate time was allocated for the initial reading and rereading. On the average about six procedures had been read by the personnel. In addition to the reading, certain key procedures were discussed with personnel during formal classroom training. The inspector noted that the QC personnel training records reviewed indicated attendance at three or more formal training sessions since June 1986.

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The inspectors determined that the QA and QC personnel were trained on QAPs and that the training records were maintained in accordance with QAP 2.10. No discrepancies were identified.

6.5 Closing of Deficiency Reports (DRs) and Policy Guidance

QIP concerns 86-64 B and G included several examples in which Deficiency Reports (DRs) had been prematurely closed. The following closed DRs were reviewed by the inspector for which no associated inspection was recorded in the QC DR logbook:

DR	Startup and Test Computer Status	Explanation
10051	Closed	Work performed on WCR 9284
10075	Closed	Deficiency Report 11861 issued
10108	Closed	Cancelled
10109	Closed	Cancelled
10118	Closed	QC determined no inspection necessary
12132	Closed	Worked on multiple DRs
12449	Closed	QC determined no inspection necessary

The inspector reviewed the QC files of open QC checklists for DRs and Work Requests (WRs). The following documents were reviewed:

Open DR in QC File	QCIR	Explanation
15093	2-86-1024	Work previously performed for checklist from EMP-114-1
17088	2-86-1687	Work previously performed with satisfactory checklist

Open WR in QC File	Computer Status	Explanation
3684	Closed	QCIR 2-85-1012 and NCR 2-86-0036 previously issued
100979	Closed	QCIR 2-86-2852 and DR 21202 previously issued
103300	Closed	Inspector found no leaks so WR was closed without any work

The inspector determined that while the QC logs and files were not consistent making it difficult to verify closure, the DRs and WRs were properly closed in all cases with appropriate QC involvement.

The inspector reviewed Startup Administrative Procedure (SAP) 121A, "Deficiency Reporting System". The procedure requires a final QA review of DRs to ensure proper completion. The inspector discussed the review of DRs with associated Quality Engineering (QE) personnel. The inspector reviewed several logs that indicated QE personnel were fulfilling the procedure requirements. Two programmatic concerns were identified:

-- The QE staff does not maintain a trend history of DRs that are found unsatisfactory during their document review. For example, instances of bypassed QC holdpoints detected by QE review are not explicitly flagged and trended, although the items are resolved on a case by case basis.

-- The inspector was presented QA policy memo 86-001 that described the mechanics of the QE review process. This memo was an example where the general Quality Assurance Procedures (QAPs) did not contain sufficient implementing direction for QA personnel, which resulted in the issuance of the informal memo and verbal instructions.

The licensee responses and corrective actions to the above concerns will be reviewed at a later date. (50-410/86-52-05)

6.6 Follow up on Cables with Outer Jackets Cut

During an NRC interview, one QC inspector stated that in September 1985 he identified that contractor personnel were cutting into the outer jackets of installed cables while trimming back the fire protection foam from the PGCC cables. The contractor personnel used sharp knives to trim back the foam and one cable was cut through to the conductor. DR 05681, E&DCR C 46072 and NMPC NCR 2-85-007 were generated to identify and resolve the concerns associated with cut cables. QC issued Surveillance Report SR-85-10317 to address this concern. The QC inspector who originated this surveillance report did not believe that he had all the facts necessary to accept the corrective actions in December 1985. At that time he believed that the corrective actions were limited to the items discussed in the surveillance report and that an investigation by QC had not been performed to determine the existence of similar problems in other cables. Based on the above, the QC inspector requested that his supervisor resolve this surveillance report. The supervisor closed this surveillance report on December 4, 1985 based on his understanding of planned corrective action in this area which was later documented in a Report of a Problem dated May 27, 1986. However, the supervisor did not explain his reasons for closing this surveillance report to the QC inspector.

The NRC inspector reviewed this issue to assess the adequacy of licensee actions when a surveillance report was closed out by the initiator's supervisor. This concern was reported to the licensee's architect engineer for resolution in a Report of a Problem dated May 27, 1986. An engineering evaluation was performed, and a decision was made to randomly inspect eighty cables from all affected areas. This inspection was completed on August 12, 1986, and it identified four additional cables that were cut but not through the jacket. The inspector determined that the cuts identified in these four cables were within the allowables established in the licensee specifications. The inspector determined that this licensee action was adequate to resolve the concern identified in the QC Surveillance Report.

The inspector furnished a copy of the licensee's engineering evaluation and additional cable sampling to the QC inspector who had initiated the original QC Surveillance Report. The QC inspector reviewed this additional material and stated that the new analysis and sampling inspection were adequate to address his original concern. He also stated that this additional information would enable him to discuss the disposition of this concern in a positive manner should the issue surface again. The inspector had no further questions in this regard.

6.7 Use of Uncalibrated Measuring and Test Equipment During Retests

A concern was expressed to the NRC during an interview that Quality Control (QC) inspectors did not verify the use of calibrated measuring and test equipment (M&TE) during retests. An NRC inspector interviewed the QC supervisor and was informed that the requirement for M&TE verification applied to retests. The inspector reviewed the NMPC Quality Control Inspection Report (QCIR) files. Based upon the review of QCIRS 2-86-1314, 2-86-5180 and 2-86-5462 that documented the use of calibrated M&TE during retest activities, the review of additional QCIRS, and the statements of QC supervision, this concern was not substantiated.

6.8 Inadequate Verification of Receipt Inspection

One QC inspector expressed a concern during an NRC interview that QC inspectors were directed by letter NM QA 1735 dated December 16, 1985 not to perform the pre-installation verification (PIV) or to verify receipt inspection of parts from ministock. In addition, he believed that the stockroom had been directed to stop performing receipt inspection of spare parts. Discussions with individuals in the Stores Receipt and Inspection department, along with a review of applicable procedures provided assurance that all parts were inspected upon receipt. In addition, memorandums issued provided direction to verify receipt inspection of parts. NMPC letter NM QA 1735 dated December 16, 1985, which instructed that the PIV not continue, was issued to prevent redundancy of inspection since the verification would be performed at installation under the Niagara Mohawk Quality Program. In addition, memorandum 9M STQA 85-13 dated December 20, 1985 provided direction to verify receipt inspection of parts. While this concern was unsubstantiated, it is another example of the need for training on policy guidance.

7.0 Followup on QA Overchecks

To determine the involvement and effectiveness of NMPC QA overcheck functions of the test and maintenance activities, the inspectors reviewed the following documents regarding audits, surveillances and corrective actions and discussed them with appropriate managers and supervisors:

-- NMPC Audits NM-RE-IN-86005, 86008, 86014, and 86017

-- NMPC Surveillance Reports 86-10510, 10603, 10626, 10640, 10641, 10677, 10605, 10577, 10594, 10452, 10294, 10131, 10124, 10271, 10368, 10453, and 10445.

-- Corrective Action Requests 86-1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010 and 1014.

The QA audits were detailed and focused on documented compliance with QA program requirements and Preoperational Test procedure requirements. While the audits met the requirements of 10 CFR 50, Appendix B, their usefulness in assessing the effectiveness of program implementation was limited since they involved little in-process observation of work activities or interviews with personnel implementing the programs and focused on after the fact review of records demonstrating compliance with requirements.

The QA surveillance program was well-structured and implemented to assess programmatic effectiveness and identify hardware problems, and assure appropriate corrective action. The surveillances documented an extensive review of preoperational test results. In several instances, test engineers had not processed necessary Deficiency Reports (DRs). As a result of the surveillance program review the DRs were subsequently issued. The surveillance function also had identified problems in controlling the use of red plastic screws to isolate circuits in the control room area and assured correction of the problem. The concerns detected and the scope of corrective actions indicated that satisfactory oversight of the field activities has been maintained.

8.0 QC Inspector Certification

As discussed in section 2.0, the NRC had previously been informed that NMPC had allegedly improperly certified QC inspectors. The inspector reviewed the following documents:

- SWEC and NMPC QC certification records.

- QAP 2.60, "Qualification and Certification of QA Inspection and Test Personnel".

- QAP 2.10, "Training".

- FSAR Table 1.8-1, page 64-67.

- NMPC Quality Assurance Topical Report.

- Regulatory Guide 1.58, "Qualification of Nuclear Power Plant Inspection, Examination, and Testing Personnel".

- ANSI N45.2.6, "Qualifications of Inspection, Examination, and Testing Personnel for Nuclear Power Plants.

The inspector reviewed the certifications of 6 QC inspectors and determined that they were in accordance with the applicable requirements. The inspector accompanied an electrical inspector during the conduct of a megger test on the Division I diesel generator output breaker. The inspector reviewed the associated work documents and found the QC inspector knowledgeable of the inspection requirements.

The inspector also reviewed approximately 220 QCIRs and identified no instances of QC inspectors performing inspections outside the scope of their certification. The inspector reviewed thirteen additional QCIRs performed by a mechanical QC inspector identified by the alleger as unqualified for some of the inspections he performed and verified that the inspection activities were within the scope of the QC inspector's certification. The inspector determined that the NMPC certification program is in conformance with commitments and requirements, that NMPC inspectors are properly certified, and that the inspectors are performing work within their capabilities. No discrepancies were identified and allegation RI-86-A-099 is not substantiated.

9.0 Exit Interview

The scope and findings summarized on the inspection cover sheet under Inspection Results were discussed with the President, Vice President, QA, and other attendees identified in Attachment 1 at an exit meeting on September 12, 1986. Based on NRC Region I review of this report and discussion held with licensee management at the exit meeting, it was determined that this report does not contain information subject to 10 CFR 2.790 restrictions.

ATTACHMENT 1
Meeting Attendees

*Meeting key		NMPC
1 2 4	W. Donlon	President
2 4	C. Mangan	Senior Vice President
1 2 4	T. Lempges	Vice President, Nuclear Generation
1 2 3 4	J. Perry	Vice President, QA
3 4	W. Hansen	Manager, Nuclear QA Operations
3 4	C. Beckham	QA Engineer
4	G. Doyle	Startup Quality Engineer
3 4	J. Buckley	QC Supervisor
4	J. Shepherd	QC Lead
4	P. Wilde	QA Surveillance Supervisor
3 4	A. Kovac	Q1P Manager
3 4	E. Manning	Q1P Interviewer
3 4	T. Gamon	Q1P Interviewer
3 4	L. Fenton	QA Auditor lead
1 2 4	T. Perkins	General Superintendent
4	R. Abbott	Station Superintendent
4	G. Afflerbach	Work Control Manager
4	K. Dahlberg	Maintenance Superintendent
4	R. Mattock	Deputy Project Director
3 4	M. Ray	Manager, Special Projects
3 4	I. Weakley	Special Projects
4	G. Griffith	Licensing
4	K. Ward	Manager Consultant Nuclear Design
3 4	B. Hooten	Special Consultant
4	M. Boyle	Nuclear Compliance and Verification
2 4	J. Beratta	Security
3	J. Dillon	Audit/Q1P Senior Supervisor
2	G. Wilson	System Attorney
2	F. McCarthy	Security
2	D. Kerr	Corporate Performance Services
2	S. Wilczek	Manager Nuclear Technology
2	R. Pasternak	Manager Nuclear Consulting Services
2	C. Gresock	Manager Nuclear Design

*Meeting key		NRC
2	T. E. Murley	Regional Administrator
2	J. Allan	Deputy Regional Administrator
1 2 3 4	W. F. Kane	Director, Division of Reactor Projects (DRP)
2	S. Ebneter	Director, Division of Reactor Safety (DRS)
2	T. Martin	Director, Division of Radiation Safety and Safeguards (DRSS)
2	W. Johnston	Deputy Director, DRS
1 2	S. Collins	Deputy Director, DRP
2	R. Gallo	Chief, Projects Branch 2, DRP
2 3 4	J. Linville	Chief, Reactor Projects Section, 2C DRP
2 3 4	P. K. Eapen	Chief, Quality Assurance Section, DRS
2	G. Meyer	Project Engineer
3 4	W. Cook	Senior Resident Inspector
2 4	C. Marschall	Resident Inspector
3 4	W. Schmidt	Resident Inspector

OTHER

4	P. Eddy	PSC Site Representative
4	P. MacEwan	NYSEG Manager
4	J. Drake	SWEC Startup Special Projects Supervisor
3	K. Roenick	PSC Site Representative
2	M. Wetterhahn	Attorney, Conner and Wetthahn

*Meeting key

1-August 29, 1986	Management Meeting Attendees
2-September 4, 1986	Management Meeting Attendees
3-September 8, 1986	Entrance Meeting Attendees
4-September 12, 1986	Exit Meeting Attendees

ATTACHMENT 2

NIAGARA MOHAWK

QUALITY FIRST PROGRAM ACTIVITIES

PRESENTATION
TO
U.S. NRC REGION I

SEPTEMBER 4, 1986

Q1P CONCERNS 86-00064A-G
RECEIVED FROM THREE QC CONTRACTORS
AT TIME OF TERMINATION

CONCERN NO.	CONCERN	INVESTIGATION RESULTS
A.	NMPC QC MGT. PREVENTING NCR ISSUANCE WHEN DR'S OR PR'S ARE NOT APPROVED.	VALID
B./G.	PR'S* AND DR'S CLOSED WITHOUT PROPER RESOLUTION OF OUTSTANDING IR'S. SU&T PERFORMING UNAUTHORIZED SIGNOFF OF DR'S.	VALID *(INVALID)
C.	LACK OF SUPPORT FROM NM QC MGT. TO SUPPORT QC PEOPLE IMPLEMENTING QC PROGRAM.	VALID
D.	QCIR NO. 2-86-0044 CLASSIFIED CAT 1, UNSAT. ITEMS IDENTIFIED. QCIR IMPROPERLY CLASSED CAT II TO ELIMINATE REINSPECTION.	INVALID
E.	NM QC PEOPLE UNAWARE OF CHANGES IN SAP'S AND QAP'S* (i.e. SAP 1.21A)	VALID *(INVALID)
F.	SU&T GIVING VERBAL DIRECTION AND/OR ISSUING MEMOS TO GIVE ENGINEERING DIRECTION AND RESOLUTION OF PR'S AND DR'S AND TEMPORARY MODS. (i.e. 2FPM-PNL129).	INVALID

CHRONOLOGY OF CONCERN 86-64

DATES	EVENTS
7/2&3	RECEIVED VERBAL CONCERNS FROM THREE CONTRACTOR QC PEOPLE DURING TERMINATION. "C" PROGRAMMATIC & ID'ED AS FOLLOWS: - SU&T DOMINATES QC ACTIVITIES - LACK OF COMMUNICATION - PROCEDURES HARD TO WORK TO - NO JOB DEFINITIONS
7/3-8	RECEIVED ANONYMOUS CALLS THAT INFORMATION GIVEN BY THREE QC PEOPLE WAS LEGITIMATE. - DECIDED TO INTERVIEW MORE PEOPLE - QUESTIONS AT INTERVIEW RELATE TO CONCERNS - DECIDED TO USE 2 INTERVIEWERS/INTERVIEW
7/10	INTERVIEWED 22 PEOPLE.
7/11-31	INTERVIEWED REMAINING PEOPLE. - ALLOWED INTERVIEWEES TO DISCUSS ANYTHING. - IF RELATED TO CONCERNS - ASKED IF AWARE OF PROBLEMS IN AREA. - IF CONVERSATION DID NOT ADDRESS CONCERN, THEN QUESTIONS ASKED. - FOLLOWING INTERVIEW, INTERVIEWERS SHARED NOTES, IDEAS, AND CLASSIFIED THEIR PERCEPTION OF INTERVIEW. - TOTAL 29 PEOPLE INTERVIEWED, 17 WERE CONTRACT AND 12 WERE NMPC DIRECT EMPLOYEES.
7/14-8/16	Q1P INITIAL INTERVIEWER & INVESTIGATORS ARRIVE AT PLAN OF ACTION TO VALIDATE CONCERNS. - START INVESTIGATIONS - TALK TO PEOPLE, REVIEW OBJECTIVE EVIDENCE (DOCUMENTS), CONDUCT INTERVIEWS. - ARRIVE AT CONCLUSIONS - WRITE INVESTIGATIVE REPORTS AND RESULTS - VALID OR INVALID.
8/19	MGR. Q1P & INTERVIEWED MET VICE PRESIDENT-Q.A. & VERBALLY PRESENTED RESULTS AND BACKGROUND MATERIAL FOR V.P.-Q.A.'S ACTION.

CHRONOLOGY OF CONCERN 86-64 - (cont'd.)

DATES	EVENTS
8/21	Q1P FORMAL TRANSMITTAL OF ALL CONCERNS TO V.P.-Q.A. FOR RESPONSE ON A,B,C,E & G.
8/21	V.P.-Q.A. MET WITH MGR. NUCLEAR QA OPERATIONS AND QC SUPERVISOR. DISCUSSED EACH CONCERN, BRAINSTORMED EACH AND DRAFTED RESPONSES.
8/25	DRAFT LETTER AND REVISED RESPONSES FROM MGR. NUCLEAR QA OPERATIONS RECEIVED BY V.P.-Q.A.
8/26&27	LETTER AND RESPONSES STRENGTHENED AND FIRMED UP.
8/28	LETTER WITH RESPONSE DATED 8/27 SIGNED BY V.P.-Q.A. AND DISTRIBUTED.
8/28	NRC RESIDENT REVIEWED Q1P FILE MATERIAL.
8/29	NRC REGION I MEETING WITH NMPC SENIOR MANAGEMENT REGARDING Q1P CONCERN.
8/31	V.P.-Q.A. LETTER TO MANAGER LICENSING AND RESPONSE RECEIVED ON REPORTABILITY AND IMPACT ON CERTIFICATION OF COMPLETION OF UNIT 2.
9/1	V.P.-Q.A. ISSUED RESPONSE SUPPLEMENT LETTER TO Q1P.
9/1	NM PRESIDENT SIGNED LETTER TO MR. KANE ON Q1P ACTIVITIES.
9/2	LETTER TO MR. KANE RECEIVED AT REGION I.

KEY FACTORS FORMING BASIS FOR . _USION REGARDING NO IMPACT ON PHYSICAL PLANT QUALITY vs. ELEMENTS OF THE INVESTIGATION REPORT

ELEMENTS OF INVESTIGATION REPORT

FACTORS	QA/SUBT RELATIONSHIPS			INSPECTION LEAD		COMMUNICATIONS					
	- QA/SUBT Mgt. Interfaces	- QA Leadership	- QA Practices - DR's vs. CAR's	- Mgt. Style	- Procedures and Instructions	- Vertical Communications	- Job Responsibilities	- Training	- QA Support	- Horizontal Communications	- Personnel Practices
1. Persons interviewed stated "no hardware problems".	X	X	X	X	X	X	X	X	X	X	X
2. Not reportable 50.55(e)	X	X	X	X	X	X	X	X	X	X	X
3. Item not directly hardware related.	X	X	X	X	X	X	X	X	X	X	X
4. Item indirectly hardware related.			X		X			X	X	X	
5. QC Inspection overchecks			X		X			X	X	X	

Revision 1
9/2/86

ATTACHMENT

Factors Forming Basis for Conclusion

(Ref. Concerns 86-00064)

1. The Quality First Program investigation showed that each concernee and every other person interviewed specifically stated that they knew of no hardware problem which was not supported for correction by QC Supervision.

2. All items identified were determined not reportable per 10 CFR 50.55(e).

3. QC inspection activity is overchecked by many specific programs.

    a. Audits - Since June, 1985, 12 audits have been performed that are test and hardware oriented.

    b. Surveillances - Since January, 1986, approximately 700 surveillances have been performed of testing and quality control activities.

    c. There are reviews of completed inspection documents performed routinely.

    d. Quality Engineering reviews DR's and WR's to verify that any required inspections were performed consistent with the work description.

    e. Some specific components received functional tests.

    f. Preoperational/Acceptance tests were often used to verify the individual components/equipment integrity on a system basis following inspection activities.

    g. Work documentation such as DR's routinely require "retest" of some conditions following completion of work and inspection activities.

    h. Start Up personnel are certified per ANSI N45.2.6 to perform testing functions.

    i. Component and system acceptance is based on recorded data and evaluated by a certified Level III Test Engineer.

NMPC NUCLEAR QUESTIONNAIRE ITEMS		NMA OPS. SECTION LOWER % POSITIVE RESPONSE 9M1	9M2
27.	QA & OTHER DEPARTMENTS WORK AS TEAM TO RESOLVE QUALITY PROBLEMS.		X
4.	NUCLEAR DIVISION GIVES PROPER ATTENTION TO QUALITY/SAFETY RELATED ISSUES.		X
21.	Q1P PROVIDES ADEQUATE CONFIDENTIALITY.	X	
7.	OPEN AND HONEST COMMUNICATIONS REGARDING QUALITY AND SAFETY CONCERNS.		X
20.	IF SUPERVISOR DOES NOT RESOLVE CONCERN, WOULD USE Q1P.	X	
33.	DURING OUTAGES RELUCTANT TO REPORT CONCERNS TO NMPC.		
24.	Q1P ADMINISTERED PROPERLY.	X	
12.	MY SUPERVISOR SUPPORTED BY BOSS TO RESOLVE PROBLEMS.		X
14.	IF SUPERVISOR DOES NOT RESOLVE CONCERN, FEEL FREE TO GO TO OTHER MANAGEMENT LEVELS.	X	
23.	I FEEL PEER PRESSURE IF I USE Q1P.	X	
11.	MY SUPERVISOR GIVES ME FEEDBACK ON RESOLUTION OF PROBLEMS.		X
13.	MY SUPERVISOR RESPONSIVE TO SAFETY/QUALITY RELATED IDEAS.		X
10.	WHEN CALLED TO SUPERVISOR'S ATTENTION, SUPERVISOR TAKES ACTION ON SAFETY/QUALITY ISSUES.		X
8.	MY SUPERVISOR ENCOURAGES IDENTIFICATION OF PROBLEMS.		X

Q1P CONCERN 86-00064C

INVESTIGATION REPORT PARAGRAPH	V.P. Q.A. RESPONSE OF 8/27/86 BULLET NO.
1. DOMINATION BY START UP	1, 2, 3
2. LANGUAGE	NOT MENTIONED*
3. SYSTEM COMPLEX/CONFUSING	1, 2, 3, 5
4. POOR COMMUNICATIONS	1, 2, 3, 4, 5

*NOTE: V.P.-Q.A. LETTER DATED 9/1/86 TO MANAGER Q1P - SUBJECT, RESPONSE SUPPLEMENT, ADDRESSES THIS SPECIFIC ISSUE.

Mr. Stello. I think a fire, as you must be aware, in a nuclear power plant is a very serious issue, and what its ramifications may or may not be, I do not think that the NRC document on that addresses it as well as it ought to, either. Allegedly the reason for not addressing it is the fire did not burn for 10 minutes, as I understand it, which I find troubling, and indeed, other allegations that were raised, that the instruments were not being calibrated properly.

That was my job as the Executive Director for Operations. That is what caused me to believe I really had no alternative but to pursue them.

Equally forcefully, you will remember the hearing we had in 1987 about not interfering with investigators. I did not want that charge. I was not involved with the actual investigation by Sharon Connolly. I think she will tell you that, and has so, plainly. That was her role as an independent organization reporting directly to the Commission.

Now, I had made the observation to you, and I guess I would like now maybe to take an opportunity to explain it, when I said my role was not to investigate Fortuna. That was not my job. But what I did know and was aware of about Fortuna, had I become aware of that information from any other source, in my view that investigation needed to be conducted.

Now let me, if I can, I would like to read for you the transcript, and so far this has not been discussed. It is now public information. I am not revealing any information that is not now public, but I will say that this investigation is not yet over. It is a pending investigation that is still ongoing. I am going to read from the transcript that refers to a discussion between Mr. Comley, Stephen Comley, and Mr. Fortuna.

> **Comley.** Okay, handle it with me. Look, be absolutely—with the Wopler case. Don't mention it to anybody.
> **Fortuna.** I have not said blank word, man.
> **Comley.** Okay. Don't even have it in your possession.
> **Fortuna.** All right, then. I'll get it the hell out of my office tomorrow. Okay. It's not in the office files. You know what I mean? It's in my room.

He is referring to agency files.

> **Comley.** Yeah. I'll take it out of there tomorrow. Yeah. Okay.
> **Fortuna.** You know that blank you sent me? I got it at work and I was reading it last—I'll bring it back.
> **Comley.** Okay. I haven't said one blank word.
> Bring it home and look at it. Keep looking at it.
> **Fortuna.** All right.

The same subject was again referred to in a later conversation which is now, again, public.

> **Comley.** All right. Okay. See you. Is there anything you want to ask, or whatever?
> **Fortuna.** Not really.
> **Comley.** All right. But the Wopler case.
> **Fortuna.** No, I haven't said I have it. You told me, I did it.

Implying, he removed the file.

To me, it is a very serious issue if an employee, the Deputy Director of the Office of Investigation, in fact removed a file that dealt with agency business and caused that information not to be made available within the agency. Presumably, it dealt with agency business. Why else make the point, it is not in the official files? What did it have to do with agency business? I do not know. Perhaps there is a benign explanation. But maybe there was safety information, or other agency business, that the agency is being deprived of. I do not condone it. I am surprised that there would be anyone who would condone that it is okay to destroy government documents, if they indeed were destroyed.

I think the matter needed to be looked at. I believe Sharon Connelly did the right thing in looking at it. We still do not have an answer. That matter is still under investigation. I believe it was a serious charge but it was not my responsibility, but I fully support it. I think the right thing was done.

Senator GLENN. Mr. Chairman, if I might just have one minute to respond to some of this——

Senator EXON. We will. We are going to go to a second round, but if you need another minute, go ahead Senator Glenn, and then we will keep moving about the committee.

Senator GLENN. Please move ahead.

Senator EXON. Senator Wirth.

Senator WIRTH. Mr. Chairman, we have another of those famous capital gains votes coming up right now. What is your pleasure as to how you would like us to proceed?

Senator EXON. Well——

Senator WIRTH. I have a number of questions which I would like to ask.

Senator EXON. Why don't you proceed. I will go over and vote and come right back, and maybe we can keep matters going.

Senator WIRTH. Senator Exon, I have a number of questions afterwards. I do not want to have the——

Senator EXON. Well, if you want to come back, why we will——

Senator WIRTH. I definitely do.

Senator EXON. Well, I would rather keep this going as long as there are people here who want to ask questions.

Senator COHEN. Mr. Chairman, could I suggest that perhaps Senator Glenn could finish his question and then Senator——

Senator EXON. Well, I do not believe John Glenn is finished.

Senator GLENN. Oh, no, I am not finished.

Senator EXON. I suspect he is not finished.

Senator GLENN. My time was up, that is all.

Senator WIRTH. Do you want to finish this one right now, John? Did you have a trailer on this?

Senator GLENN. I will go vote and get on back.

Senator EXON. John, why don't you vote and come back, then. All right, Senator Wirth, do you care to proceed now?

Senator WIRTH. That would be fine. Thank you very much, Mr. Chairman.

INTERIM APPOINTMENT

First, I have just a couple of procedural things, if I might. Mr. Stello, have you discussed the possibility of an interim appointment given the nature of the length of this and the number of people that want to testify? Have you discussed with Admiral Watkins or with the White House your receiving an interim appointment?

Mr. STELLO. I have had no discussions with the White House. I had a discussion today at lunch with Admiral Watkins on that issue. He raised it with me.

Senator WIRTH. Asking you to accept an interim appointment, is that it?

Mr. STELLO. He raised the question, and I said I needed to have a great deal of time before I think about what needs to be done.

Senator WIRTH. What was the question he raised with you, can you tell us that?

Mr. STELLO. Surely, the questions you just raised about the possibility since the White House is considering interim appointment, recess appointments, if that might be a viable option. And I would like to think about it further, and I am at least hopeful that perhaps this process can continue and be finished, and I could get an answer through the Senate process. That is my preference to get that answer, if I can.

Senator WIRTH. Given that answer, do you have any idea why it was that Mr. Tuck was named the Acting Assistant Secretary on October 5 instead of you? Could they have named you as Acting Assistant Secretary? Was there any legal barrier to them doing so?

Mr. STELLO. I am not sure I know all of the rules of the Department of Energy, but I believe you have to be—in order to have supervisory responsibility—a DOE employee. At the moment I am an advisor, and I am just on detail. I am an NRC employee. I am not a lawyer, but I will check for the record and submit for the record the correct answer, but I do not think you can do it legally. But I would have to get the answer.

[The information referred to follows:]

On October 25, 1989, Secretary Watkins designated John Tuck, the Under Secretary of Energy, as Acting Assistant Secretary of Energy for Defense Programs. The correspondence concerning this assignment is attached. Mr. Stello is still an employee of the Nuclear Regulatory Commission and not a DOE employee, and therefore, assignment to a DOE line management position would have been inappropriate.

THE SECRETARY OF ENERGY,
Washington, DC, October 25, 1989.

MEMORANDUM FOR THE UNDER SECRETARY

I have been informed by John L. Meinhardt, Acting Assistant Secretary for Defense Programs, that the vital national security mission of the Department can no longer be carried out under the current management arrangement. I concur in his assessment that Defense Programs has operated far too long without the leadership and direction that can only evolve from a duly appointed and confirmed Assistant Secretary.

As you know, the nomination of Victor Stello to be Assistant Secretary for Defense Programs is pending before the Senate Armed Services Committee. It is my hope that the nomination will be acted upon expeditiously. However, in the interim, it will be necessary to alter current arrangements in the Office of Defense Programs.

Accordingly, effective October 25, 1989, you are directed to assume the additional duties of the Acting Assistant Secretary for Defense Programs for the time being pending confirmation of the President's nominee to this important post.

JAMES D. WATKINS,
Admiral, U.S. Navy (Retired).

Senator WIRTH. Can you give us a brief history of your relationship with Mr. Sununu? Have you known him for a long time?

Mr. STELLO. I met Mr. Sununu, I believe, one time. I think it was once in my office when he came and he asked to have a meeting with the General Counsel and myself—no, it was at that time—it was the Executive Legal Director—the office was split into two parts—to go over what were the procedures in the agency with regard to emergency planning and what various alternatives were provided in our rules with respect to emergency planning.

Senator WIRTH. This is when he was Governor?

Mr. STELLO. This is when he was Governor.

Senator WIRTH. And it is just that. You have not had a long and extensive relationship. I do not really care one way or another. This is an issue that has been out there for a long time, and I just wanted to see if you had any long-term relationship with Mr. Sununu, because you are familiar with the suggestion that this appointment is one that has come from the White House and not from Secretary Watkins. I asked Secretary Watkins about it this morning, and I am asking you about it now.

Mr. STELLO. It is not true.

RESPONSE TO CRITICISMS

Senator WIRTH. Let me move from procedural issues, if I might, Mr. Stello, and start by reading you a few short quotes from what appears to me to be a large number of critics.

John Dingell, the chairman of the House Energy Committee said, "The only benefit of moving Mr. Stello to the Department of Energy is ridding the NRC of Mr. Stello." "In my view," said Mr. Dingell, "the administration has made a serious mistake in nominating Mr. Stello for this serious position. I hope that reason will prevail so that Mr. Stello's nomination will not be approved."

Sam Gejdenson, the chairman of the House Interior Subcommittee on Oversight and Investigation said, "Stello was constantly on the wrong side of every issue all the time. He stifled independent inquiry, and he was such a believer, that he did not have the temperament necessary to be a watchdog of the industry."

Mr. Julian Greenspun, former Justice Department lawyer responsible for prosecuting violations of NRC regulations, testified before the Senate Governmental Affairs Committee in 1987, "Based on my extensive experience with the NRC, I can unequivocally state that I know of no other regulatory or investigative agency where senior agency officials have taken as bizarre and seemingly deliberate actions intended to hamper the investigation and prosecution of individuals and companies in the industry the agency regulates."

And a final item from Robert Pollard, nuclear safety engineer for the Union of Concerned Scientists and former NRC official in a letter to this committee, "It is a rare occasion indeed when the public record of a nominee's past conduct discloses characteristics antithetical to virtually every attribute which would be desirable in the position to be filled."

Now, these are not isolated comments. How can you explain this just downright negative reaction of Members of Congress and others to you and to your work at the NRC? Clearly these are not people who had internal problems with you as was suggested in your response earlier, that somehow it was an internal affair, you being too tough administratively and so on. What is your reaction to this, Mr. Stello?

Mr. STELLO. I would start with anyone in a senior position regulating nuclear power is making decisions which are going to be very controversial. They are going to get scrutinized, and if you look at just about every decision that the agency makes, you will find that there is criticism one way or the other.

It is a very controversial subject. Nuclear power has had heightened sensitivity within the United States since TMI and especially after Chernobyl.

There is a great deal of heightened awareness and sensitivity to the issue. As the Chief Operating Officer of the Nuclear Regulatory Commission—in fact, if you recall some of the quotes, you will find that the criticisms were of the NRC and of various officials and as the Chief Operating Officer, I think—and rightly so—I am held accountable and responsible for the activities of the staff and everyone in the agency, and this is, again, as it should be.

A little while ago one of the quotes was raised about an inspector who knew something in 1978 that was handled improperly. There have been many references, and you will see them in what I have prepared of other activities of other people within the agency, previous EDOs at the Commission itself and other elements of the staff where things were not done to some other people's satisfaction and hence the criticism falls on me. Again as the Chief Operating Officer, I accept that criticism. Being in this job is one where you are going to have a lot of people that become angry. I think you were here this morning. Senator Kennedy he said he was not going to vote for me because of Seabrook.

Senator WIRTH. What?

Mr. STELLO. Because of Seabrook. The Nuclear Regulatory Commission, incidentally, unbeknownst to me until—in fact, Senator Kennedy was the one who informed me—told me that the independent board which is independent of the staff—it is independent of the Nuclear Regulatory Commission itself—it has the authority and latitude to operate freely—it issued a decision which would authorize the issuance of the Seabrook full power license. I think Senator Kennedy noticeably is angry, and he said because of what went on in Seabrook he was not going to vote for my nomination. That is what he said this morning. He is basically saying I am responsible for the outcome of all the activities related to Seabrook because I was the EDO.

Senator WIRTH. You say this is endemic to the position. Anybody in a position would be receiving the same kind of criticism and would be involved in the same kind of controversy?

Mr. STELLO. Well, the way he said what he said this morning——

Senator WIRTH. Leaving aside what Senator Kennedy said, I asked you about all of these reactions from Members of Congress and other outside people, not people inside the NRC, not people who might have run afoul of a strong administrator. Now, are you suggesting it is not Senator Kennedy's allegation, but that it is other individuals? Are you telling us that this is endemic, or part of the job? Anybody who is the head of the NRC would have this kind of broadly gauged attack or criticism?

Mr. Stello. I think the answer is yes, and I think you have seen it of the commissioners themselves, the attack that the commissioners have been under, just about every Commission since I have been there now, for 23 years.

Senator Wirth. Has anybody else received this kind of very broad and deep criticism? Have any other members of the Commission or any other directors ever been investigated by Congress in this way?

Mr. Stello. Yes.

Senator Wirth. Who else has had this——

Mr. Stello. The commissioners themselves.

Senator Wirth. Who else has had the kind of investigation like that? We had two, one from the Commerce Committee on the House side, one from the Interior Committee and one from the Committee on Government Operations over here. I do not think there is anybody else, is there, who has ever had this kind of examination? I really do not believe that.

Mr. Stello. Are you suggesting that those examinations were of me only?

Senator Wirth. I am just asking you if anybody else——

Mr. Stello. They were of the agency itself. That is precisely my point.

Senator Wirth. Had anybody else——

Mr. Stello. The agency has been under attack.

Senator Wirth. Had any other individual been the focus of the kind of examination as you have? I do not think so, and I just wanted your reaction how to explain this.

This morning we heard that your rationale was that this was a lot of internal people who had been perhaps bruised by an administrator who was just doing his job. In fact, these are not individuals who would have had an experience of a zealous and effective administrator. These are people on the outside. And I wanted to get your reaction to that. Let me go on if I might or—Mr. Chairman——

Senator Exon. I believe, Senator, we have 2 minutes left to get over to vote. I suggest we take a short recess, and I would advise staff that when any Senator comes back, please have him call the meeting to order and proceed with the questioning.

[Brief recess.]

Senator Glenn [presiding]. The hearing will resume. Mr. Stello, you read from a transcript a few moments ago there. What was the source of those conversations?

Mr. Stello. That is a transcript of a recording of a conversation between Mr. Comley and Mr. Fortuna. The transcript along with my letter to you was released unbeknownst to me in a court proceeding with Mr. Comley when the Department of Justice went to court to try and get additional information that Mr. Comley had. As part of that trial proceeding it was released, and I obtained a copy when it was—both of my letter to you as well as that tape recorded conversation.

Senator Glenn. What is the procedure over there at—what has been the procedure or the policy with regard to recordings like that? Does there have to be—is this agreed to by everybody you will do this or does there have to be a court order or how do those take place?

Mr. **Stello**. The conversation that was recorded?

Senator **Glenn**. Yes, what was the authorization to record private conversations? This was a wiretap, I presume, right? Was it a wiretap or was it just recording on another telephone or what?

Mr. **Stello**. I do not know for certain. I will tell you my understanding, but I really do not know for sure. I understood it was a conversation that was recorded by Mr. Ellison in another phone in a hotel room while Mr. Comley had been talking to Mr. Fortuna. Whether Mr. Comley and/or Mr. Fortuna was aware that it was being taped, I do not know. That is what I have understood, that the conversation was a recording made by Mr. Ellison, but I do not know for a fact.

Senator **Glenn**. The question is, was this a legal phone tap and if so, how did it become legal?

Mr. **Stello**. I have no idea. I am just reading from a transcript that I have a copy of that was filed as part of a court proceeding.

Senator **Glenn**. A court proceeding. It was entered into evidence there?

Mr. **Stello**. Yes, sir.

Senator **Glenn**. Okay.

NINE MILE POINT INVESTIGATION

Back to Mr. Fortuna again here, the fact that Fortuna was the target of the investigation and you authorized payment up to $6,000 to an informer—now, this was done against the advice of General Counsel of the Nuclear Regulatory Commission, right?

Mr. **Stello**. Not to the best of my knowledge, it was not against—he did not advise against it. I asked him whether I had the legal authority to do it, and he indicated I did.

Senator **Glenn**. But I think that authority——

Mr. **Stello**. But he was not——

Senator **Glenn**. I believe if I am not mistaken that you were told, were you not, the only way you could do that was if that was a health and safety matter.

Mr. **Stello**. Yes, clearly. If it were business that I was responsible for, which were health and safety issues, precisely.

Senator **Glenn**. Well, if that was the case and if this was a health and safety issue and we carried on this activity and the NRC General Counsel told you that that is the only way it could be done, and then you found out some things that had happened, why did you wait 7 months or 9 months or whatever it was before you did anything about it if it was important to health and safety matters?

Mr. **Stello**. The Nine Mile Point facility was shut down. I did not want to get into our investigating those with our inspectors in providing that information because it might ruin the ongoing investigation. I was asked not to get into it because it could ruin the investigation and identify the source in the matter—and the basis of the investigation.

Senator **Glenn**. You were asked not to get into it?

Mr. **Stello**. Not to reveal, yes, the information.

Senator GLENN. Who asked you not to reveal it?

Mr. STELLO. The whole process was set up to try to hold the identity of the witness and the subject of the investigation. The judgment of not pursuing it and not pursuing him was my design, my desire not to disrupt that investigation. It had a heightened sensitivity, especially from the 1987 hearings, not to go out and start doing independent work independent from the IG function, which was Ms. Connelly, unless I had an urgent safety basis to do so.

Senator GLENN. When the committee——

Mr. STELLO. Since the plant was shut down and its expected start-up was later in the fall—at least that is what I understood in August—and then the schedule for the plant kept slipping and, in fact, the plant is not yet started up today, I wanted to be assured that those matters would be looked into prior to restart.

Senator GLENN. Well, the committee had concluded when we looked into it before that you had provided this health and safety rationale for authorizing cash payments to Ellison in order to escape the NRC General Counsel's directive that it could not be done without a health and safety basis. But we also felt that most of the investigation focused almost exclusively on Fortuna's activities, and the health and safety and wrongdoing issues raised by Ellison were pretty much ignored then after this was over. You are saying they were ignored only because of what, now, that it would influence—it would curtail or—it would jeopardize what other investigation?

Mr. STELLO. The ongoing investigation of Mr. Fortuna, reason one. Reason two, the Nine Mile Point plant had been shut down, and the schedule for its start-up was originally expected to be in the fall. The schedule for that start-up continued to slip, and I do not believe the plant is yet started up. So, I wanted to be sure we would dispose of the safety matters prior to the restart of the plant. I was confident that I could do that by putting together an inspection team and getting these issues resolved.

I will say, as I said to Congressman Kostmayer, that I did regret not pursuing the issue of the drugs sooner because a question of drug use, even in a shut down plant where activities may be going on that were important to safety by someone under the influence, certainly was not something that we should have condoned, and I said I think in my judgment now in retrospect should have tried to find a way in which to go ahead and do at least that part of it.

The remaining allegations that related to equipment itself were issues that I felt clearly and still feel today could have been put off.

Senator GLENN. Well, Congressman Kostmayer——

Mr. STELLO. But the issue of drugs—I think the issue of drugs, it should have been—we should have tried to find a way to do that faster.

Senator GLENN. You mentioned Congressman Kostmayer, and he has indeed written to Senator Nunn with copies to members of the committee, and he addressed it in this way in the next to the last paragraph:

> When looked at in toto, I believe that the only conclusion that can be reached is that Mr. Stello ignored public safety and health while pursuing a vendetta which has proved costly to both Mr. Fortuna and to the Federal Government. What is more, to the extent that Mr. Stello tried to couch his actions as being consistent

with a concern for health and safety, I believe that he has wilfully mislead my subcommittee as well as other committees of this Congress.

Mr. STELLO. I have not seen the letter, so it is——

Senator GLENN. It is a letter of November 13 to the chairman of the committee.

Mr. STELLO. Well, I have not seen it. I am telling you what motivated me and what I was doing. Safety was what I felt was my job, and I was pursuing it. I accept the criticism. I probably should have been pursuing it faster, but I am not sure if the letter suggests that the issues, the safety issues that were being pursued were not legitimate safety issues. If that is the conclusion he has reached, I respectfully and forcefully disagree.

Senator GLENN. Why did you not go to a subpoena rather than paying for the testimony?

Mr. STELLO. That question was raised as a possible vehicle. It was the judgment of the investigator that using a subpoena would not get the information that was needed, and I had no reason to quarrel. In fact, I think it was probably correct.

Senator GLENN. What is Mr. Parler's position? He is the General Counsel, is that correct?

Mr. STELLO. He is the General Counsel, yes, sir.

Senator GLENN. In the Governmental Affairs Committee report from August of this year, it takes up his third contact with the Office of General Counsel on page 14, and part of that reads as follows:

> Parler, aware of a history of problems over OIA investigations of OI personnel, of problems between Fortuna and Connelly, which will be discussed supra, immediately warned Connelly that she would be viewed as being vindictive. He said that the worst combination that could have been put together was Stello and Connelly investigating Fortuna, that Connelly was starting with unnecessary excess baggage at the outset because of the history of tension between OIA and OI and that she might find a logical explanation for Fortuna's behavior with individuals outside the NRC. Parler also recalled that when he learned that Fortuna was the real target and it was Connelly and Stello who were in charge of the investigation, he advised the chairman's office it was a no-win situation for the agency. When questioned about the matter in April 1989, Parler states, "Had I known on August 25, 1988, what I subsequently learned in recent months, I would have urged the agency to proceed with the issuance of a subpoena if indeed the information was needed for a valid regulatory purpose." In Parler's view there was no legal impediment to the issuance of a subpoena. He further indicated that had he been told all the facts about Ellison, he would have changed his advice about the feasibility of the contract because when one is dealing with a consultant, in his opinion, one must deal with someone who is responsible and credible.

Have you and Mr. Parler discussed that since that time or what are your comments on that?

Mr. STELLO. No, I understand Mr. Parler's point of view. There was no doubt in my mind that this issue was a sensitive issue. There was no doubt in my mind I was going to be explaining this issue sometime later, and as I told you with my letter, I would rather be explaining it from the point of view of having pursued the safety issues rather than from the point of view of not pursuing the safety issues. Unfortunately, now it seems like maybe I am being criticized for not pursuing the safety issues as fast as perhaps they should have been and at least in part of that I agree.

Senator GLENN. We had the health and safety issue come up time after time, as you are aware. And it seems that—and I know you are concerned about health and safety issues, but it seemed as though every time there seemed to be some problem that your apparent attitude is that anything you do almost can be justified by health and safety considerations. I am even more troubled when I think you might further attempt to justify any action you take at the Department of Energy for reasons of national security or State secrets. Do you have any comments on that?

Mr. STELLO. I do not think my job has ever been anything other than health and safety. Decisions that I make will be in the future as they have in the past on the basis of doing what I believe to be correct from a health and safety point of view.

Senator GLENN. Well, no—and I do not quarrel—but if we look at it that way, we would say that anything is justified because the whole mission of the NRC is safety and health, health and safety matters. So, we do not just justify any action on the basis of safety and health, and that is what has been alleged.

Mr. STELLO. Well, I recognize that is what has been alleged, but I get back to the issues. I had the issues and the issues are clear. I feel an issue of someone under the influence of drugs is clearly, without question in my mind, a legitimate safety issue that must be pursued. I felt required to pursue it.

The suggestion that there was a fire in the drywell, the very nerve center, the core of the plant, that was unreported, and gundecking of records and perhaps purposely so, not knowing what effect that fire may or may not have had on safety, I absolutely felt that issue must be pursued on the basis of safety.

Issues such as improper procedures where instruments were not calibrated correctly I believed that had to be pursued. I cannot in my judgment——

Senator GLENN. Why; you sat on that for 7 months. I do not see why that would have interfered with an ongoing investigation if that had become known or if something had been done about that.

Mr. STELLO. Well, clearly, to get into the issues and reveal the information that we had would have had to have been given to other inspectors and broaden the number of people that had it.

If the plant were, in fact, ready to start up, I think I probably would have assembled the team and would have had to get together because then I think that that safety issue clearly had to be disposed of before the plant could be permitted to start. As I told you, the plant was not yet ready to start, it is not yet even today started up. My concern was to make sure those issues were resolved before the plant was started up. I felt comfortable that I could accomplish that and not yet get accused as we were in 1987 of disrupting the investigations because clearly doing it would have been disruptive to the investigations. I did not feel that I needed to do—that is, disrupt the investigation—and I felt comfortable that those issues could be and would be resolved before the start-up. That is the safety issue. That was my judgment.

Senator GLENN. My time has expired. Senator Wirth.

Senator WIRTH. Thank you very much, Senator Glenn.

Mr. STELLO. Senator Wirth, if I may, I never got to finish the answer you were asking me.

Senator WIRTH. I am sorry.

Mr. STELLO. You were asking me about were there others in the agency when this kind of a thing happened to them and they were pressured. I think I can recall at least one instance where there was an executive director who was literally forced out of the agency back in 1981 or so, 1980 or 1981, in that time frame, after intense scrutiny. There were considerable investigations of the chairman, Joe Hendrie, following the TMI accident, as well as many of the other commissioners. There were other commissioners who have been subject to investigations and many of the employees of the NRC.

Senator WIRTH. Why was it that the person you referred to was "forced out of the agency"? Why was that? What was the smoking pistol on that one? Do you remember? He lied to Congress, did he not?

Mr. STELLO. I do not remember——

Senator WIRTH. Was that it, that he lied to Congress?

Mr. STELLO. I would be happy to answer the question for the record. I do not have firsthand information to feel comfortable answering it. I will get an answer.

[The information follows:]

Mr. STELLO. To the best of my recollection, Mr. Gossick, who was a previous Executive Director of Operations, resigned from the NRC in the early 1980s timeframe. I was unable to obtain specific documentation regarding the circumstances of Mr. Gossick's resignation.

Senator WIRTH. Again, the point was made this morning, and I do not want to belabor this, that the reason so much controversy surrounded your tenure was that you were a very zealous administrator and in the process of carrying out your responsibilities you stepped on some toes and that is why all of this happened.

Before we broke, the purpose of my questions was to point out that this was not something that only happened internally. We have a lot of problems on the outside, and I wanted to get your reaction to that.

Let me ask you another question. The Interior Subcommittee concluded, "Those at the highest levels of the NRC staff, including the Executive Director for Operations"—that is you—"interfered with and undermined an investigation of nuclear plant licensee wrongdoing performed by the NRC's Office of Investigation. The actions of the staff made it difficult, if not impossible, for the NRC to take civil or criminal enforcement action against a utility which had violated the Atomic Energy Act and the NRC's regulations by knowingly making false statements to the NRC." Now, it seems to me this is a very damning statement, Mr. Stello, and it strikes the theme that we heard over and over and over again from other congressional critiques of your tenure at the NRC.

To give you another example, a recent report by the Senate Governmental Affairs Committee found that you, as the top NRC staffer, were involved in "all facets" of an internal investigation that "was pursued in a questionable manner," was unfair to its target, appears to have been motivated by "personal and professional animosity among NRC personnel," and wasted Government money.

To go beyond that, John Dingell wrote to this committee to strongly oppose your nomination, and his letter was referred to this morning. He said:

I suggest that you review Mr. Stello's role in certain situations where I believe the NRC has performed badly. Among these are the failures to deal appropriately with widespread noncompliance with NRC regulations at the Zimmer plant, at Commanche Peak, and at the Tennessee Valley Authority. It would also be worth inquiring into Mr. Stello's role in toning down proposed fire regulations and in sidetracking proposed regulations intended to decrease significantly the likelihood of a major radiation release in the event of a severe accident at any one of the 24 commercial boiling water reactors.

RESPONSE TO ALLEGATIONS

Now the question is, what is going on here, Mr. Stello? You undoubtedly have explanations for each allegation, but I am struck again by the extraordinary breadth of controversial instances in which you have gotten embroiled. What can you say to this committee that would inspire our confidence and that from the perspective of the people working in and living around the Rocky Flats nuclear weapons plant after all of this highly critical assessment? I mean, who are we to believe in all of this?

Mr. STELLO. I guess if I were in your place, I would have to take each of those issues and look at them one at a time—and I am more than willing and prepared to do that if you wish—and ask you to make an objective judgment based on the facts, not some generalizations based on reports but rather for yourself, to look at the facts.

For example, one which you came to mention is the TVA issue, the Stello-White conversation, which was the subject of a number of investigations. I think there were four. Let me read you the conclusions of those four investigations on that matter as an example to try to illustrate what are the facts. There were four investigations; I think it was four. Let me read them. This is the Committee on Governmental Affairs, Senator Glenn:

> The committee finds OIA's investigation of Stello failed to gather all of the relevant facts. In presenting this case study, the committee does not attempt to draw any conclusion about whether Stello engaged in improper conduct.

Congress encouraged the Commission and at their request got an independent investigator from the General Accounting Office named David Williams. He investigated this matter, and his conclusion was:

> Accordingly, GAO's investigation substantiated that the Stello-White conversation did not contravene relevant NRC regulations as applied at the time in question.

There was also a report written by the Committee on the Environment and Public Works in the Senate. Their conclusion was:

> The subcommittee found no evidence to indicate that the telephone conversation between Victor Stello, Jr. and Steve White of March 20, 1986, involved any improper effort by Stello to coach White through the preparation and submission of TVA's response to the Commission's letter of January 3, 1986.

Fourth was the independent inspector and auditor report, and that conclusion was:

> No information developed during this inquiry to substantiate any impropriety on the part of Stello during his telephone conversation with White.

Now, those are four independent studies that looked at that issue, and those are the conclusions that they have reached. The only way I know to come about making the judgment is to do so by looking at each of these issues, and I would be happy to do that for each and every issue you raise.

Senator **Wirth**. So you would say that the way to put all of this to bed and rebuild the public's faith that our nuclear weapons complex is safe, is to go through each one of these issues and sort every one of them out for the public record? That is your best belief? I am asking you how do we go about rebuilding faith and trust?

Mr. **Stello**. I believed that the kind of allegations about what I had done, motives, the agency, was going to be an issue in my hearing, and that is why I prepared this book, to do exactly what you say, to go through them one at a time and deal with them one at a time so that an objective, impartial analysis and decision is possible derived from the facts.

Senator **Wirth**. I appreciate that, and if I were in the position I would do the same thing. We are at something of a disadvantage, as Senator Glenn and others pointed out this morning, in not having received this until last night and, second, not having the information which the chairman had requested from the White House through the Department of Justice and in attempting to come in and do all of this in these very hectic closing days of the Senate. Now that is not your fault, but I just cite that it makes it very difficult if one of our jobs in going through this whole process is to try to sort all of this out.

Effectively, if you are confirmed by the Senate, what the Senate is doing is putting a Good Housekeeping stamp-of-approval on Victor Stello. I think that there are a lot of people who are not yet prepared to do that. There are a lot of questions still out there. It is going to be a tortuous process to go through all of this and make sure we all understand it.

You have done yeoman work in preparing this book, which again I personally had just heard about last night and certainly have not had a chance to take a look at. We have a lot of work to be done, but your answer as to how do we restore confidence, how do we get to the point of hitting the Good Housekeeping seal is we have to go through a lot of this material, and I think we have to be prepared to do that.

I have other questions, Mr. Chairman, but I do not know how you want to proceed. I have a note that my time has expired.

Senator **Exon** [presiding]. Thank you, Senator Wirth. We started out today with the intent of going as many rounds as necessary so that all members of the committee would have a full opportunity to ask any questions they wish. I would start out by saying that I hope you are not asking me to give you the Good Housekeeping seal-of-approval, Mr. Stello, because if I have to do that you are not going to receive any chance of favorable consideration. You are not seeking the Good Housekeeping seal-of-approval, are you?

Mr. **Stello**. No, sir. I would like for this committee to report out favorably on my nomination. That is my goal. That is why I am here.

Senator **Exon**. Thank you. Let me ask you this question.

DEPARTMENTAL PERSONNEL

In your view, does the Department of Energy possess sufficient numbers of adequately trained personnel to manage and oversee the Department of Energy weapons production facilities both at headquarters and in the operations offices; and if not, how will you attempt to correct this problem?

I think it suffices to point out now that the Senate passed and authorized what the Secretary of Energy had requested for a limited number of individuals to exceed the pay caps in its Defense authorization bill. Unfortunately, in my view, that was dropped in conference. I suppose you share the Secretary's view that that would be very helpful in meeting the problems.

Could you tell us how adequately trained the personnel both at headquarters and the operations offices are and, if you think they are not sufficiently trained, how do you suggest we correct this problem?

Mr. STELLO. Senator, I was quite surprised when I came to the Department to find that they really did not have a training program. We spent a lot of emphasis on that particular task at the NRC, and under my direction we established a training center in Chattanooga to train the NRC people to be able to do their jobs of inspections and reviews.

That program is very comprehensive. It includes fundamental skills and knowledge in the various fields that they need to deal with, nuclear physics, health physics, inspection techniques such as ultrasonic testing, the design of systems, and how the systems operate and function. We have three simulators to train people so they truly understand the performance and nature of the plants. I was very, very surprised that there is nothing like that in the Department of Energy, and I really believe they have a very, very urgent need to start training.

I have suggested, and the Secretary has agreed, as part of my advice to him to get together training programs associated with the Savannah River restart, and that is one of the major programs that is down there now. We also have training programs for the NRC people, and we have been able to hire a number of trained NRC inspectors. I hope Chairman Carr recognizes I did not do that. It was done before I got there. We have quite a few people from the NRC who are trained in that area and are using them with respect to the Savannah River reactors because the need there is urgent.

The need is across the Department. The need is urgent for training. There are not enough people, especially, I would say in my observation of the headquarters department, to truly oversee and have a way to truly manage the activities that are going on on these many, many sites and really understand what is going on. The training I would put first. Having people without training is not very good.

Senator EXON. If I understand you correctly, then, you believe that there are people there who with additional training could do a good job but you would still have an overall shortfall of the amount of talented and required people that you need?

Mr. STELLO. Yes. I think the training will go a long way in helping correct the problem to get those people to understand how to go about inspecting and assessing the adequacy of those facilities. That is the first task, to get that kind of training program across the board for the people, in my view. The Secretary has indicated he is, in fact, going to get a broadbased training program for the Department in place, but that will take time. We have begun in those areas and activities I have been involved with, which is Savannah River reactor restart.

PLUTONIUM REQUIREMENTS

Senator Exon. In earlier questions this morning and earlier this afternoon we got into the matter of tritium. You said that you thought it was critically important that we have some redundancy in tritium production. Do you also believe that we should be looking at some contingency facilities capable of producing plutonium for the late 1990s? How do you view that problem as opposed to the tritium shortage?

Mr. Stello. Well, there is clearly a question of what are plutonium requirements out into the later years——

Senator Exon. Right.

Mr. Stello [continuing]. Weapons grade plutonium and then 238 that is used in various NASA missions, such as the Galileo mission that was just launched.

Senator Exon. Exactly how do you see that?

Mr. Stello. I think that that is an assessment that needs to be included in the new production reactor question to be sure that they indeed have the flexibility to take the targets to produce plutonium of both types as a contingency for the future. Now what we need to do between now and then is an open question in my mind, but it is something that also needs to be reviewed.

Senator Exon. Is it safe to say, then, that tritium is our first priority but that future plutonium production is something that we also should be considering?

Mr. Stello. That is my judgment, yes. Tritium far and away is far more critical, in my judgment.

Senator Exon. Thank you. My time is up. Senator Glenn.

FORTUNA INVESTIGATION

Senator Glenn. Thank you, Mr. Chairman. One final point on the Fortuna investigation, Mr. Stello. You claim the allegations were serious, deserved investigations and I do not disagree with that. They certainly did deserve investigating. What we do disagree upon was the decision to pay the informer. He had recently been criminally convicted. What you bought were perhaps altered tapes, maybe even illegally made and obtained, I do not know. I just felt that the payment on that was something that the NRC, or the general counsel, had not gone along with unless it was a very narrow thing of health and safety, and as we saw it, that became not the focal point of the investigation. You stated otherwise a few moments ago. I guess we just disagree on that one.

On another matter, and that was with regard to the Office of Investigations. In late 1986 you proposed, and the Commission agreed to establish, an Investigations Referral Board—the IRB—to function as a screening board for referrals of wrong-doing matters by the NRC's regulatory staff to the OI, the Office of Investigations. The IRB was authorized for a 6-month trial period over the objection of then-Commissioner Asselstine, who saw it as "a thinly veiled attempt by the EDO"—you, the Executive Director—"to control OI by controlling what referrals were made, and thus what OI investigates. The technical staff should not be performing investigations of wrong-doing. The staff's lack of expertise in this area and its inability to produce credible investigation reports is what led to the formation of OI in the first place." That is the end of the quote of Mr. Asselstine.

As a result of the IRB, there was a demonstrated downturn in the number of wrong-doing matters referred by the NRC staff to the OI for investigation, and then the Commission did not vote to renew the IRB after its trial period. Why did you want the IRB?

Mr. STELLO. There were clearly a lot of investigations that were being requested that really did not need to be. There were inquiries, there were investigations being assigned to such things as trying to find a licensee that could not be found, and one for which I felt a need in which to assess the priority of the investigation.

What are, really, the important safety issues that you only—we are always limited with our resources. Which ones need to be done first, foremost, to get some national priority? If we have more investigators in one region, should they be doing investigations that are clearly of a lower priority than the investigations in another region? How do you get a national priority?

I felt then, as I do now, that that is an issue that is important and that ought not to be decided solely by investigators, but rather by the whole staff. The principal office directors of nuclear reactor regulation, nuclear materials, our regional administrators, as well as the investigators. That particular activity is still going on today, quite successfully, I might add, and as I understand it is very helpful to the people in making sure that the priorities are assigned correctly.

I can assure you that we have had to have numerous meetings in dealing with the fraudulent issue and we have had, in my view, very, very successful cooperation in setting the priorities of how to go about finding out where all of the substandard and fraudulent material—nuts, bolts, fasteners, fittings, pipes, flanges, circuit breakers—where the investigative staff has had to work very, very closely with the engineering staff in setting the priorities on what to do, and it has worked very, very well.

It is, I think, an activity that really is needed for management. I do not understand how you manage something without having all of the people who have a part to play in the process to sit down together and say, let us sort out what are the most important issues from a safety perspective and make sure we get at them.

Senator GLENN. Was the OI not capable of doing that?

Mr. STELLO. No, sir. They are investigators. They do not really make any judgment about safety. That is not their assigned task.

Senator GLENN. They could have everything referred to them. They could certainly prioritize what they were asked to do—what they received.

Mr. STELLO. Not in my judgment, not in terms of the safety impact.

Senator GLENN. The IRB was not renewed, though. It is not in existence now, is it?

Mr. STELLO. There is a remnant of the IRB still going on today that reviews the information, periodically makes these assessments, and Mr. Hayes, I think, is a part of it now. Yes, sir.

Senator **GLENN**. I thought that the Commission voted not to renew it, that was my understanding.

Mr. **STELLO**. The activity still goes on. Mr. Hayes is a part of that activity in making those assessments and that national ranking in priority.

Senator **GLENN**. With regard to the—I guess what I would like is assurance that—I know you are an operator. You like to get those plants on and operating and we all share that goal, obviously, particularly now that they have been down this long. But the Department of Justice questions that Senator Levin asked earlier, and the IRB matter with respect to their operations, do you fully support criminal investigations of DOE contractors if they are warranted, if it looks like there has been wrong-doing?

Mr. **STELLO**. Most emphatically.

Senator **GLENN**. Even if that impacts on the morale and work product of contractor personnel, which you have indicated concern about in your testimony before?

Mr. **STELLO**. Senator Glenn, please, I need to make the point, what I referred to before was trying to recover from a very difficult accident under a very, very stressful environment which there were enormous health and safety potential.

The concept of adding and bringing people off shift, those operators, and being subjected to intense investigations when they were operating the plant in a condition for which none of us—the operators, nor as regulators—knew what would happen, if, for example, that plant had lost off-site power. There were not even procedures in place of what we could do, and we knew we had an enormously difficult task to generate procedures to do that job.

It is in that context, under a very unusual set of requirements, that I made that comment and to suggest that that would apply routinely, to routine operation, is just not what I had in mind when I made the comment I did. It was limited to that particular observation and I have extremely vivid recollections of how intense that environment was. We were working 18 and 19 hours a day, 7 days a week, trying to deal with that environment. We were in a very, very difficult situation.

Senator **GLENN**. I understand all that, and there is one area that has not even been brought up yet that applies right here though in the poor morale, because you had used poor morale in the NRC regional offices as a justification for speeding up the IG investigation of Comanche Peak. We have not even talked about Comanche Peak. Is that correct?

COMANCHE PEAK

Mr. **STELLO**. That is correct. If you like, I will be happy to go through Comanche Peak.

Senator **GLENN**. My time is up, but go ahead and proceed.

Mr. **STELLO**. With the Chair's permission, if I may.

Senator **GLENN**. He was going to answer, I had asked something about Comanche Peak.

Senator **EXON**. Go ahead. Then we will recognize Senator Wirth.

Senator **GLENN**. All right.

Mr. **Stello**. As you were aware, that issue was also investigated because Congress had asked for an independent investigation. The conclusion of the GAO report on that matter—I would like to cite it, because I think it answers the question directly:

> GAO found insufficient evidence to support the OIA investigator's claims that NRC management interfered with the conduct of the OIA investigation, or that the results were incorrectly reported.

There was another issue related to it, and I would like to read the conclusion with respect to it and "with regard to the distribution," which was another issue that was raised regarding the report:

> GAO found no basis to question the conduct of the EDO, who explained that the Commission authorized the distribution to assist NRC management in addressing import matters such as health and safety issues requiring immediate action.

Witnesses told the GAO that they were disturbed about the distribution of the report containing unredacted transcripts of their statements to high-level management officials and to the principal witnesses. However, none of the witnesses interviewed asserted that they had been subjected to reprisals. Moreover, none of the witnesses identified in the OIA report or transcripts asked for or received a pledge of confidentiality from anyone in the OIA and Mulley voiced no objection to the release.

There is one other point, I think, that is appropriate. While you have directed the question that I was involved, you remember during your investigation that the suggestion was that there was pressure being put on from others in the agency, including the Chairman's office itself, and all that too was found not to be supportable. I think you will find that there were suggestions that there were others involved.

Senator **Glenn**. My time is up, Mr. Chairman.

Senator **Exon**. Thank you, Senator Glenn. Senator Wirth.

RESPONSE TO ALLEGATIONS

Senator **Wirth**. Thank you very much, Mr. Chairman. In your testimony, Mr. Stello, you claim that, "The allegations were unsubstantiated after congressional inquiry." You said that on page 4, and I quote:

> Many of these allegations have been subjected to one or more investigations by various oversight groups, congressional committees, and the Federal Bureau of Investigation. Results of these investigations show that these allegations were unsubstantiated.

That is from your testimony.

Mr. **Stello**. Correct.

Senator **Wirth**. Let me ask you if these statements, then, reflect the exoneration claim. This, again, from the Interior Subcommittee report concluding that:

> Those at the highest levels of the NRC staff, including the Executive Director for Operations, Stello, interfered with and undermined an investigation of nuclear plant licensee wrongdoing performed by the NRC's office of investigations. The actions of the staff made it difficult, if not impossible, for the NRC to take civil or criminal enforcement action against a utility which had violated the Atomic Energy Act and NRC's regulations by knowingly making false statements to the NRC.

Now, is that an exoneration? Is that a non-substantiation, Mr. Stello?

M . STELLO. I believe the case you are referring to is the Enrico Fermi case. That matter was investigated. I have answered that question as part of my response to Congress and to the Senate.

Senator WIRTH. But your testimony said that these investigations show that these allegations are unsubstantiated. But here we have the Interior Subcommittee report concluding just the opposite. Why do you say that this is unsubstantiated, and you have the Interior Subcommittee report concluding—it appears to me from their language—just the opposite?

Mr. STELLO. Well, can I read you the results of an investigation where the matter was investigated——

Senator WIRTH. Mr. Chairman, I just want to point out that we have 14—the first time I heard that number was today from Secretary Watkins. Again, I have no capability of examining 14 between the time that I heard about it this morning and now. We apparently have this very lengthy book coming from Mr. Stello which we have not had an opportunity to look at either. What I would like to do is get these answers for the record, Mr. Chairman, because it seems to me that we have an obligation to try to look at all of these.

Now, again, I go back and I will use the phrase again, a Good Housekeeping seal. The people that I represent live downwind from the Rocky Flats nuclear weapons plant. The Rocky Flats nuclear weapons plant was raided by Federal agents. The people who live around there are deeply concerned, Mr. Chairman, about what is going on in that plant, and they want to believe that the Federal Government is acting responsibly now. They want to believe that Secretary Watkins is going to come in riding a white horse and clean this up and reassure them that those kids are safe. Have you been to Rocky Flats, Mr. Stello?

Mr. STELLO. No, I have not.

Senator WIRTH. Well, Rocky Flats is where the prevailing winds come from west to east. There are three extraordinarily windy places in the United States. One of these is Hawaii, one is Tahatchipi Pass in California, and the third is the canyon coming down from Boulder down past Rocky Flats to Denver. It is one of the windiest places in the country. The prevailing wind comes from Rocky Flats, an area under investigation in which allegations about operations have been very severe. The wind comes from there to a metropolitan area of a million people plus. Now, those people are concerned and they ought to be concerned. You would agree that they should be concerned, as I know they are concerned?

Mr. STELLO. I am concerned over the operation of Rocky Flats based on what I see.

Senator WIRTH. So, therefore, we want to do everything we can. The purpose of this, Mr. Chairman, is to do everything that we can to assure that every step is being taken and being taken in a very careful way. I think there is a conflict between what Mr. Stello said in his testimony today and the Interior Subcommittee. Let me give you another example.

Mr. **Stello**. May I be allowed to give you the basis for making the statement?

Senator **Wirth**. Fine.

Mr. **Stello**. It was investigated by the OIA and their conclusion is, in brief:

> This inquiry did not substantiate the allegation that Victor Stello used undue influence to change the OI report of investigation on Fermi II or that he tried to have the report changed.

The facts clearly show that the report was, in fact, never changed. There was nothing to undermine the investigation and, in fact, if you wish I will get you the transcript of the meeting when this issue was discussed at the Commission. And I think what I said before, I remind you of what needs to be done. Let us get to the real facts. My recommendation was that that matter ought to be referred over to the Department of Justice so there cannot be any question that there was no one to influence in trying to suggest otherwise.

Senator **Wirth**. I appreciate that and I would certainly, if I were in your position, look very carefully at these allegations.

We have to have the capability, Mr. Chairman, of looking at the response to this and looking at the allegations that have been made on balance and make a judgment. It is very hard to do in a compressed period of time.

Let me try another one. A recent report by the Senate Governmental Affairs Committee found that you, as the top NRC staffer, and these are their words, "were involved in all facets of an internal investigation that was pursued in a questionable manner, was unfair to its target, appears to have been motivated by personal and professional animosity among NRC personnel, and wasted government money." That is the Senate Governmental Affairs Committee. Is that one of the 14 items in the book that we have been given?

Mr. **Stello**. It is, indeed.

Senator **Wirth**. You have answers to that and we can have that subpoenaed for the record?

Mr. **Stello**. You do have the answer. I just spent quite a bit of time discussing that matter with Senator Glenn a few moments ago.

Senator **Wirth**. Fine. Let me do a third one, if I might. On November 13, Congressman Kostmayer, from the Committee on Interior and Insular Affairs, wrote to Chairman Nunn, and I believe we all have this letter. If not, Mr. Chairman, I would like to have it included in the record, if I might.

Senator **Exon**. Without objection, so ordered.

[The letter referred to follows:]

U.S. House of Representatives,
Committee on Interior and Insular Affairs,
Washington, DC, November 13, 1989.

Hon. Sam Nunn,
Chairman, Senate Committee on Armed Services,
Russell Office Building, Washington, DC.

Dear Mr. Chairman: As your committee prepares this week for hearings on Mr. Victor Stello's nomination to be Assistant Secretary of Energy for Defense Programs, I wanted to share some information which emerged during recent hearings conducted by the House Interior Subcommittee on General Oversight and Investigations, which I chair.

On Thursday, October 12 the Oversight and Investigations Subcommittee held a hearing to review the actions of Mr. Stello and other high-ranking Nuclear Regulatory Commission officials in their investigation of Mr. Roger Fortuna, Deputy Director of the NRC's Office of Investigations.

It is my feeling, based on the overwhelming preponderance of evidence presented at the October 12 hearing, that Mr. Stello allowed this investigation to continue despite the fact that it was motivated by personal animosity and professional antagonism. In addition, testimony suggests Mr. Stello's claims that his actions were motivated by an interest in health and safety are disingenuous. Moreover, Mr. Stello in allowing the single-minded pursuit of this vendetta, did in fact ignore several potentially serious health and safety allegations made by the same individual that had accused Fortuna of wrongdoing.

Furthermore, it appears that Mr. Stello, in formulating a justification for his actions after the fact, may have made willful misstatements to my subcommittee and other committees of Congress.

By way of background, Mr. Roger Fortuna for several years has held the position of Deputy Director of the NRC's Office of Investigations (OI), the body within the NRC responsible for exploring allegations of wrongdoing by licensees. In early August 1988, the NRC's Office of Inspector and Auditor (OIA) was contacted by Mr. Douglas Ellison, a former employee of the Niagara Mohawk utility, who made a series of allegations relating to willful wrongdoing by the Niagara Mohawk utility officials, violations of proper procedure by the utility, as well as wrongdoing by several NRC officials.

To support these allegations, Ellison said he had, among other evidence, tape recorded telephone conversations between himself and certain utility and NRC officials. After only cursory review of Ellison's "evidence," Mr. Stello on September 1, 1988, took the extraordinary step of authorizing a contract to pay Ellison $6,000 in cash, principally for the tape recordings.

Over the course of 2 weeks in early September, OIA investigators interviewed Ellison in a northern Virginia hotel, during which time Ellison made roughly a dozen allegations relating to licensee wrongdoing and NRC malfeasance. Following the completion of the Ellison contract, the OIA launched an investigation of just one of these allegations: the charge that Mr. Fortuna had in some way conspired with antinuclear activists to "topple the NRC." Without exception, every other allegation made by Ellison, including charges of onsite drug abuse, improper handling of allegations he had made earlier relating to licensee violations, and a charge that Niagara Mohawk had instigated sexual impropriety charges against him, were not investigated until news of the Ellison contract has been made public.

The evidence gathered against Fortuna was subsequently referred both to the Department of Justice and the FBI for potential prosecution. Both agencies categorically refused to pursue the matter, in fact telling NRC officials that the only potential wrongdoing related to illegal taping of telephone conversations. Nevertheless, the OIA pursued its investigation. In February, 1989 OIA officials sought to interview Fortuna under oath without the presence of an attorney. When he refused, on the advice of counsel, to be interviewed in this manner unless OIA officials would cite their authority, he was placed on administrative leave and threatened with dismissal.

Fortuna's case remains open, chiefly because NRC officials have refused to close it until subpoenas issued are answered. It is important to note, however, that to date not a single allegation made against Mr. Fortuna has been proven. What's more, Mr. Fortuna has spent nearly $70,000 defending himself.

In his testimony before my subcommittee and other congressional committees, Stello claimed that he had taken the extraordinary step of authorizing the secret cash contract with Ellison because a) he believed that Ellison had evidence of new health and safety allegations at Niagara Mohawk's Nine Mile Point Unit 1 reactor; and b) he believed that the start up for Unit I was imminent and that these allegations must be immediately investigated.

Evidence that the subcommittee has been able to gather suggests that actions taken by Stello at the time of and subsequent to the signing of the contract are not consistent with this rationale.

I. In relation to Mr. Stello's claims that Ellison's information was "new," there is significant reason to doubt whether Mr. Stello could possibly have known whether any allegations made by Ellison relative to the Nine-Mile Point facility were in fact new before he okayed the contract. Mr. Stello first okayed the contract on August 30, a single day after NRC investigators had completed initial interviews with Ellison. Since none of the NRC personnel who interviewed Ellison had any technical expertise or firsthand knowledge of the Nine

Mile Point facility and because at no time were either Region I or utility officials consulted as to these allegations, it would have been impossible to determine with any certainty that the purportedly new allegations had been received or dealt with previously or were in fact new.

II. In relation to Stello's claim that start-up of the Nine Mile Point facility was imminent, the subcommittee was able to uncover nearly a dozen NRC documents related to the projected restart of Unit 1 that were issued between July and October, 1988. None gave any indication that either a) restart could reasonably be expected in the near or even foreseeable future or; b) that there was any reported change in the restart status of the plant between September 1 and September 16.

Mr. Stello's claim that he had received some new information between September 1, 1988 (when he signed the contract because he believed restart of Unit 1 was imminent) and September 16, 1988 (when all of Ellison's allegations had been received by the NRC) to convince him that the restart date of Unit 1 had slipped does not correspond with the facts. During his testimony before the subcommittee Mr. Stello himself recanted earlier testimony that he had given the Senate Government Affairs Committee by stating that as late as October he still believed that an autumn 1988 restart was probable. This raises the question of why he didn't immediately refer the health and safety-related allegations (which he had known of at least since September 16) for action, since it was vital that they be investigated before restart.

Perhaps more important than the facts surrounding the signing of the contract is the manner in which Mr. Stello acted on the health and safety allegations once they were received. Evidence suggests that safety was not the primary objective of the investigation at all. Of the roughly 15 allegations made by Ellison, approximately half dealt with health and safety violations at Nine Mile Point. The most important of these are allegations of drug use at the facility. Nonetheless, Mr. Stello waited until March 29, 1989, well after the story had been made public, to refer the drug allegations for investigation.

In defending this delay, Mr. Stello's sets forth two primary reasons. The first of these relates to his claim referred to earlier that the start-up date for Nine Mile Point Unit 1 had slipped to some unknown date in the future. Therefore, according to Mr. Stello, investigation of the allegations could be postponed so long as they were explored before restart. This rationale raises questions both as to Mr. Stello's judgment and to the factual nature of his statements.

There is no question that allegations of drug use should have been immediately referred for investigation. While it is true that Unit 1 was not operating at the time the allegations were made, Unit 1 personnel were preparing the plant for operation. Fuel was on site, and such critical functions as welding and electrical work were being performed. Further, the plant personnel against whom Ellison leveled his allegations routinely perform tasks at both reactors within the Nine Mile Point facility. Unit 2 was in constant operation for the seven months during which Stello sat on the drug allegations.

Mr. Stello's second rationale for delaying action was his desire not to compromise the ongoing investigation of Mr. Fortuna.

If Mr. Stello had been truly interested in expeditiously referring the health and safety allegations without compromising the investigation, he could have done so on November 4, 1988, the date the NRC first informed Mr. Fortuna of the problems. Failing that, Mr. Stello could have referred the allegations on February 15, 1989, the date when OIA officials next attempted to interview Fortuna. In fact, Mr. Stello waited a full six weeks after the second Fortuna interview before referring allegations of drug use for investigation.

When looked at *in toto*, I believe that the only conclusion that can be reached is that Mr. Stello ignored public safety and health while pursuing a vendetta which has proved costly to both to Mr. Fortuna and to the federal government. What's more, to the extent that Mr. Stello tried to couch his actions as being consistent with a concern for health and safety, I believe that he has willfully misled my subcommittee as well as other committees of this Congress.

Mr. Chairman, while this letter obviously represents only a brief recounting of the facts of this case, I hope that the members of your committee will recognize that Mr. Stello's actions in this matter should be taken seriously and should be duly considered during your deliberation on this nomination. I would be happy to make available to you or other members of the committee a draft of a subcommittee report that provides a more full recounting of the facts contained in this letter.

With every good wish,
Sincerely,

PETER H. KOSTMAYER.

Senator WIRTH. Mr. Kostmayer said further:

> It appears that Mr. Stello, in formulating a justification for his actions after the fact, may have made willful misstatements to my subcommittee and other subcommittees of Congress.

The letter then goes on for three additional pages. It closes by saying:

> When looked at in toto, I believe that the only conclusion that can be reached is that Mr. Stello ignored public safety and health while pursuing a vendetta which has proved costly to both Mr. Fortuna and to the Federal Government. What is more, to the extent that Mr. Stello tried to couch his actions as being consistent with a concern for health and safety, I believe he has willfully misled my subcommittee as well as other committees of Congress.

Now, I know that you and Mr. Kostmayer have been back and forth on this. I am not in a position to gauge one way or another, but I would appreciate your response to Mr. Kostmayer's letter.

Mr. STELLO. I do not have a copy. I was never provided a copy of this letter. I have dealt with the issue.

Senator WIRTH. Again, we are in a situation where you have not been provided the information, we have not been provided the information, the committee has requested information from the White House which has not been forthcoming, here we are boxing in the night, not knowing what the rules are, or what are being defined and looked at. I am a little unclear as to where we are going and what we are trying to accomplish here without information that we all agree is the information that ought to be looked at. I will certainly make available to you, Mr. Stello, a copy of the letter. Right here, we have it directly. Mr. Seabright will give you the letter. You have it and we are all squared away.

Now, I am sure the record will be left open, Mr. Stello, so we can get a response from you. I have a note here, Mr. Chairman, that my time has expired.

Senator EXON. You can go ahead, Senator. We are trying to close up, but I want to give you any time that you need, and I have another question or two before I finish.

Senator WIRTH. Thank you very much. I have a number of questions, Mr. Chairman.

Apparently not only has there been criticism from committees of Congress, but we have criticism of the NRC's Advisory Committee on Reactor Safeguards. From information I have received, and again, we do not have the capability to do the extensive research on this that I believe is necessary, there are at least two instances in which you have been criticized by the NRC's Advisory Committee on Reactor Safeguards for misrepresenting or misstating a position on reactor safety. In the more recent case, the chairman of the ACRS was moved to write a letter to then NRC Chairman, Lando Zech, in January of this year complaining that you misrepresented the committee's views on a sensitive document on reactor risk.

Committee member Harold Lewis added in a postscript, and I quote, "The Executive Director for Operations, Stello, in effect is telling you that we concur in his proposed use of a report we have repeatedly criticized in writing. We have not done so, and it is not only improper for him to tell you that we have, it is disingenuous." Is this one of the 14 allegations that you have answered in the book, Mr. Stello?

Mr. STELLO. No, it is not, but I would be happy to provide for you an answer.

I went to the ACRS meeting to discuss that matter. I apologized directly to Hal Lewis, who made the additional comment, and told him it was clearly not our intent when the staff prepared the paper, it was not intended to have the meeting that he was putting it. I explained to him what we had done about it, and we went through it, and I think there was an amicable resolution of the issue.

Senator WIRTH. Can we get a response to that allegation, Mr. Stello?

Mr. STELLO. From Dr. Lewis?

Senator WIRTH. Well, the allegation has been made regarding the Advisory Committee criticizing your behavior on this. Is the response that you have just given us adequate for the job, or if you want to make any more response, we will certainly leave it open for you.

Mr. STELLO. I will be happy to provide the entire transcript of the meeting.

Senator WIRTH. Whatever you think is appropriate for answering the question. We are trying to be as fair here as possible and make sure that we all have the same information.

Mr. STELLO. If possible, I will try to get a response from the individual, Dr. Hal Lewis.

Senator WIRTH. I am just giving you the opportunity to make sure that all of the allegations that have been made, you have the opportunity to answer again, and I am sure the record will be left open for that.

Mr. STELLO. I will do my best to get a response from Dr. Lewis.

[The information follows:]

DEPARTMENT OF PHYSICS,
UNIVERSITY OF CALIFORNIA,
Santa Barbara, CA, November 16, 1989.

Hon. SAM NUNN,
Chairman, Senate Armed Services Committee,
U.S. Senate, Washington, DC.

DEAR CHAIRMAN NUNN: It has come to my attention that my name has come up in connection with your consideration of the nomination of Victor Stello for the Defense Programs job in the Department of Energy. Earlier this year Mr. Stello signed a letter, as Executive Director for Operations of the Nuclear Regulatory Commission, which alleged to the Commission that the Advisory Committee on Reactor Safeguards had approved certain NRC staff proposals, when it had done no such thing. The Committee, of which I was and am a member, took exception to this, and wrote a letter to that effect to the Commission. I felt even more strongly than did my fellow members, and attached to the letter an additional comment to the effect that Mr. Stello's representation was disingenuous.

Soon thereafter, on March 10, 1979, Mr. Stello appeared before our Committee, and we were, I think, all prepared to fight this out. Mr. Stello, to his credit, disarmed the entire situation by saying that he had reread his own letter, acknowledged that it was wrong, and apologized for the misstatement. According to the transcript of the meeting, I then said, "That's in the past, and we now go on." I felt then, and feel now, that Mr. Stello handled himself well (after the initial error). He neutralized what could have been a serious confrontation, and I hold no residual rancor over the incident.

Since I am writing you, I might add that I support the nomination. I have known Mr. Stello for many years, and have had innumerable fights with him about substantive nuclear matters, things on which reasonable people can and do disagree. He knows the business of nuclear safety as well as anyone. I think it is because he is aggressive about it, as am I, that we sometimes disagree. It is always about method, never about purpose.

I am also on the Energy Department's Advisory Committee on Nuclear Facility Safety, chaired by Dr. Ahearne, and prior to that served as one of Mr. Herrington's panel on the safety of the N Reactor, so I am not unfamiliar with the endemic nuclear safety problems at the Department of Energy. I have long recommended that the best approach to upgrading the Department would be through recruiting people with experience in the commercial arena, where great progress has been made in the last ten years. Mr. Stello epitomizes the kind of person I've had in mind, and I believe he will be a real asset to the Department.

I needn't remind you that I write this as an individual, not reflecting the views of either Committee on which I serve, or indeed of anyone else. I sometimes wish it were otherwise.

Sincerely,

H.W. LEWIS, *Professor.*

Senator WIRTH. The second case involving the NRC's Advisory Committee on Reactor Safeguards involved a written assessment by you in early 1988, "The growing evidence that nuclear reactor supports may grow brittle much faster than expected does not appear to pose any safety problems." This view prompted then-ACRS Chairman, William Kerr to respond in a letter to you that he was "concerned and perplexed" by your assessment and then, "It is not clear that we know with any certainty that all reactors are safe."

Mr. Kerr went on to urge the NRC to launch an immediate investigation rather than your reported alternative of long-term research. Moreover, Richard Cheverton, a senior engineer at Oak Ridge, said at the time that you misrepresented Oak Ridge's position when you told Mr. Kerr that an Oak Ridge study supported your conclusion that the brittleness was not a safety problem.

First of all, Mr. Chairman, do we have the correspondence from the ACRS Chairman Kerr to Mr. Stello in early 1988?

Mr. EXON. I beg your pardon?

Senator WIRTH. There is a second allegation here from the ACRS Chairman William Kerr about Mr. Stello in early 1988 on safety problems. Do we have a copy of that letter that we can submit for the record?

Senator EXON. I will have to inquire of staff as to that. Do we have that letter? I am advised by staff, Senator Wirth, that we are not certain that we asked for that. We are checking at this time to see if we have a copy of it in our files.

Senator WIRTH. If we do not have it, ask for the letter. If we are not sure we have it, we have not checked those allegations ourselves, right?

Senator EXON. Evidently not.

Senator WIRTH. Can I ask you, do we have a copy of the statement of Mr. Cheverton, the senior engineer at Oak Ridge, who said that Mr. Stello had misrepresented Oak Ridge's position when he told Mr. Kerr that an Oak Ridge study supported the Stello conclusion that the brittleness was not a safety problem? I do not know if we have that letter or not, Mr. Chairman, but this is another allegation that has been made on the issue of the relationship of Mr. Stello to this Advisory Committee on Reactor Safeguards, a prime safety and environmental concern, and I hope we have that record.

Have you seen the Kerr letter and the Cheverton statement, Mr. Stello?

Mr. STELLO. I have seen the Kerr letter. I am not certain whether I ever did or did not see the letter. I am aware of the concern. I know what the issue is. I would be happy to respond to it if you would like.

Senator WIRTH. Could we, Mr. Chairman, make sure that Mr. Stello has the Kerr letter and has the Cheverton statement? It seems to me these are both pretty significant statements being made by senior officials, one the senior engineer at Oak Ridge, Mr. Cheverton, the other the ACRS Chairman, William Kerr. And if we could get those to you and also get your response, I think that would be greatly appreciated.

Mr. STELLO. Yes.

[The information follows:]

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

November 16, 1989

The Honorable Sam Nunn, Chairman
Committee on Armed Services
United States Senate
Washington, DC 20510-1001

Dear Mr. Chairman:

I am writing this letter to provide you with information relative to a question posed during the confirmation hearing held yesterday for Mr. Victor Stello, Jr. The question concerned a potential safety issue that was the subject of correspondence between Mr. Stello and Professor William Kerr, then Chairman of the Advisory Committee on Reactor Safeguards (ACRS), during the period from July, 1987 to March 15, 1988. The issue arises from the embrittlement of the steel structures that support the reactor vessels in nuclear power plants as a result of neutron irradiation of these structures during reactor operation.

I am providing you with copies of the key documents (Enclosures 1 through 8) that indicate action on the issue through its resolution, and also my personal recollection of the interaction between me and Mr. Stello on the issue.

The key documents on the issue are the following:

Enclosure 1. NUREG-0933, 11/30/83, pages 3.15-1 to 3.15-4
This defines the safety issue.

Enclosure 2. ACRS letter Kerr to Stello, 7/15/87
This letter states ACRS concern about structural steel support embrittlement, and recommends actions for NRC to carry out.

Enclosure 3. NRC letter Stello to Kerr, 8/04/87
This letter describes the actions undertaken by NRC in response to the ACRS 7/15/87 letter.

Enclosure 4. NRC letter Stello to Kerr, 10/07/87
This letter gives a preliminary assessment by the NRC staff of work done by the Heavy Section Steel Technology Program at the Oak Ridge National Laboratory. It is important to note that this assessment was premature and mistaken in part. The letter should have pointed out that some of the support structures have cantilever beams that are in tension.

Enclosure 5. ACRS letter Kerr to Stello, 12/08/87
This letter takes issue with the conclusion of the NRC letter dated 10/07/87, and poses two questions for the NRC staff to answer.

Enclosure 6. Wall Street Journal Article by Bill Paul dated 1/22/88
This article made the issue public.

Enclosure 7. NRC letter Stello to Kerr, 1/28/88
This letter replies to the ACRS letter dated 12/08/87, answering the two questions, and concluding that "the embrittlement of reactor vessel support structure does not pose an immediate threat to the safety of nuclear power plants." Furthermore, it notes further research action underway to identify operating plants that may be susceptible to brittle failure at the operating temperature, and to identify appropriate action for those plants. Based on the NRC evaluation, this is a longer term matter that could affect the safety of some plants near the end of plant life. (It is being worked as a high priority Generic Safety Issue GSI #15.)

Enclosure 8. ACRS letter Kerr to Chairman Lando W. Zech, Jr., 3/15/88
This letter refers to the exchange of letters on this subject, noting the presentations made by NRC staff to ACRS on March 10-12, 1988 (the meeting transcript can be made available if needed), and stating that ACRS finds that the NRC staff program on the issue is appropriate.

I have the following information to add with respect to my personal recollection of the interaction between me and Mr. Stello on this issue. At that time he was Executive Director of Operations, and I reported to him. As Director of the Office of Nuclear Regulatory Research, I am responsible for the safety research programs. Mr. Stello and I discussed this issue many times during the period indicated above. I can assure you without reservation that he took this issue seriously from the beginning, and urged its resolution. The direction that he gave to me was to respond to the ACRS concerns and to resolve the issue to the satisfaction of the ACRS. He did not prescribe how the issue should be resolved.

The NRC letters were prepared by the NRC technical staff, and were approved by me for the signature of Mr. Stello. As noted above, the NRC letter dated 10/07/87 was premature and mistaken in its interpretation of the data that Oak Ridge National Laboratory had by then provided. The responsibility for this mistake is mine, and not Mr. Stello's. The mistake was cleared up in the NRC letter dated 1/28/88, and the technical issues were presented to the ACRS during its March 10-12 meeting. At the conclusion of the meeting on this subject, Drs. Shewmon and Remick of ACRS, both of whom took a strong interest in the issue, complimented the NRC staff that made the presentation. I reported the outcome to Mr. Stello, and he expressed his satisfaction with it.

I hope this information will be helpful to you. Please let me know if you have any questions about it.

Sincerely,

s/

Eric S. Beckjord, Director
Office of Nuclear Regulatory Research

Enclosures:
As listed above

List of Enclosures

1. NUREG-0933, 11/30/83, pages 3.15-1 to 3.15-4, Definition of Issue
2. ACRS letter Kerr to Stello 7/15/87, Subj: Embrittlement of Structural Steel
3. NRC letter Stello to Kerr 8/04/87, Subj: Embrittlement of Structural Steel
4. NRC letter Stello to Kerr 10/07/87, Subj: Embrittlement of Structural Steel
5. ACRS letter Kerr to Stello 12/08/87, Subj: Embrittlement of Structural Steel
6. Wall Street Journal article by Bill Paul 1/22/88 on same subject
7. NRC letter Stello to Kerr 1/28/88, Subj: Embrittlement of Structural Steel
8. ACRS letter to NRC Chairman Lando W. Zech, Jr. 3/15/88, Subj: Embrittlement of Structural Steel

Enclosure 1

ISSUE 15: RADIATION EFFECTS ON REACTOR VESSEL SUPPORTS

DESCRIPTION

Historical Background

This issue was identified as a Candidate USI in NUREG-0705[44] but was recommended for further study before a judgment is made on its designation as a USI.

The potential problem is caused by the radiation embrittlement of structural materials. In the past, most neutron damage has been associated only with those whose energy is ≥1 MeV. However, it has also been recognized that neutrons whose energy is between 0.1 and 1 MeV also contribute to damage.[64] An upwards shift in the nil ductility transition temperature (NDTT) has been related to high fluence exposure of low energy neutrons. Essentially, all of the neutrons reaching the vicinity of a reactor vessel support structure (RVSS) have low energies because most of the fast neutrons ($E>1$ MeV) have been moderated or shielded in leaving the reactor vessel. The transition temperature for brittle failure of many structural steels begins in the neighborhood of -50°F, but after high exposure to a neutron fluence, the transition temperature can become as high as 200°F. This means that loss of fracture toughness may occur in the RVSS. Given a transient stress or shock, a rapidly propagating fracture of the RVSS and consequent movement of the reactor vessel could occur. An earthquake could provide such a transient mechanical loading.

Safety Significance

A large seismic event can cause an embrittled RVSS to fracture thereby allowing the reactor vessel to move. Such movement can then lead to a LOCA from the rupture of piping attached to the reactor vessel.

Possible Solutions

There are two possible solutions to this issue: (1) provide local heating and insulation for the RVSS to keep it well above the NDTT, and (2) reinforce the RVSS in those areas where fracture toughness loss may no longer allow the RVSS to be capable of meeting seismic requirements.

The first of these solutions will be considered as far as possible to develop both cost and occupational risk assessments for a candidate resolution. This general approach is necessary for the generic plant risk assessment because, for each plant where the problem really exists, the resolution will be plant specific.

The possible solution would probably only be required during the latter one-third of a reactor's life. Thus implementation of the solution is assumed to occur after two-thirds of the plants' operating lives have expired. From NUREG/CR-2800,[64] this vulnerability period is about 9.6 years for PWRs and 9.1 years for BWRs.

PRIORITY DETERMINATION

Frequency/Consequence Estimate

The research needed to understand the problem has been underway since about 1979 but little data is available. The severity of the problem is not well documented, nor are the susceptible RVSS materials identified. Consequently, to represent the technical community opinion as to whether a problem exists or not, a probability of 0.5 is assumed. In addition, to represent the uncertainty of which RVSS materials may be susceptible, a vulnerable plant probability of 0.4 is also assumed. Thus, 20% of the BWR and PWR plants constructed and planned will be assumed applicable, i.e., 18 PWRs and 9 BWRs of those identified in NUREG/CR-2800[64] will be used for determining the risk parameters for PWRs and BWRs, respectively.

For both PWR and BWR plants, it is assumed that the accident scenario begins with an embrittled RVSS and a seismic event of large enough magnitude (0.2g acceleration) to cause the RVSS to fracture allowing the reactor vessel to move. That movement causes a LOCA (pipe blockage or rupture) for piping attached to it. Data from Oconee 3 and Grand Gulf 1 were used for determining risk parameters for PWRs and BWRs, respectively. The frequency of a rupture of RCS or loss of coolant flow due to a seismic event with an acceleration equal to, or greater than, 0.2g was assumed to be 7×10^{-4}/RY for both types of reactors.

For PWRs, the only WASH-1400[16] risk parameters presumed to be affected were SS_1, SS_2, and SS_3. The frequencies of SS_1, SS_2, and SS_3 were based on the assumptions that the probabilities of flow blockage or pipe rupture due to RV movement when the RVSS failed were 0.5, 0.6, and 0.8 for the SS_1, SS_2, and SS_3 cases, respectively. Considering the WASH-1400[16] Release Categories PWR 1 through 8 and substituting the calculated[64] risk parameters in the dominant sequences and frequencies for Oconee 3 resulted in a reduction in core-melt frequency of 1.1×10^{-5}/RY. The public risk reduction associated with this frequency reduction is 16 man-rem/RY.

For BWRs, the only WASH-1400[16] risk parameter presumed to be affected was SS. The frequency of SS was based on the assumption that the probability of flow blockage or pipe rupture due to reactor vessel movement when the RVSS failed was 0.8. Considering the WASH-1400[16] Release Categories BWR 1 and 2 and substituting the calculated risk parameter in the dominant sequences and frequencies for Grand Gulf 1 resulted[64] in a reduction in core-melt frequency of 5.9×10^{-7}/RY. The public risk reduction associated with this frequency reduction is 4.2 man-rem/RY.

Therefore, the total public risk reduction during the vulnerability period for 19 PWRs and 10 BWRs is 3,100 man-rem.

Cost Estimate

The resources required to implement the safety issue resolution at each of the applicable plants are labor and equipment. It is assumed that heaters will be attached to 4 reactor vessel support columns and that mounting hardware, wiring, metal-sheathed heating cable, switchgear, transformer, and a power controller will be installed. It is also assumed that the equipment would be installed during reactor outages for other purposes and that no replacement power cost would be charged to the solution. It is further assumed that access to the reactor cavity would be possible for the heater installation. The cost of equipment in each affected plant is estimated to be $52,000 for 4 strip heaters clamped to support columns; mounting hardware, materials, and wiring; power controller; switchgear and transformer; and metal-sheathed heating cable. A 50% contingency was included in this cost.

Costs for equipment, labor, and license amendment are estimated to be $520,000 for each of the 14 backfit plants. Thus, the industry cost for implementing the possible solution is $7.3M.

Industry operation cost for maintenance repair, replacement, and power associated with the solution are estimated to be $144,000/RY over the vulnerability period for each of the 14 backfit plants. Thus, the total industry cost for operations and maintenance is $18M, assuming the systems would only be operated during the last one-third of each reactor's life.

NRC costs associated with development and implementation of the possible solution are estimated to be $1.5M for 14 backfit plants.

NRC operation and maintenance review costs associated with the solution are estimated to be $283,000/RY over the vulnerability period of the 14 plants.

Summing all costs outlined above,

Total Cost = $7.3M + $18M + $1.5M + $0.283M = $27M.

Value/Impact Assessment

Based on a total risk reduction of 3,100 man-rem for the affected plants, the value/impact score is given by

$$S = \frac{3{,}100 \text{ man-rem}}{\$27\text{M}}$$

$$\cong 115 \text{ man-rem/\$M}.$$

Other Considerations

There are three factors to be considered that would have an effect on the overall conclusion to be drawn on this issue. These are:

(1) Implementation Occupational Risk Increase

Implementation of the solution would require work to be performed inside the containment of the 14 plants considered for backfit. For each of these plants it is estimated that 54 man-weeks (2,160 man-hours) of labor would be in radiation zones. Assuming a dose rate of 100 millirem/hour, the total occupational dose increase from implementation is 3,020 man-rem.

(2) Operation and Maintenance Occupational Risk Increase

Following implementation of the solution, operation and maintenance would be required during the vulnerability period. Assuming a yearly rate of 520 man-hour/plant for operation and maintenance, the total occupational dose increase is estimated to be 6,490 man-rem.

(3) Accident Avoidance Occupational Risk Decrease

It is estimated that implementation of the solution will preclude NDTT rupture accidents during the last one-third of the remaining lives of all 27 plants. The total occupational dose reduction associated with this factor is estimated to be 39 man-rem.

Summing the above three factors, the total occupational risk increase is [3,020 + 6,490 -39] man-rem or 9,471 man-rem. Consideration of these factors demonstrates that a total occupational risk increase of 9,471 man-rem would be incurred in order to produce a reduction in public risk of 3,100 man-rem. Inclusion of these factors in the value/impact score calculation would result in a negative score.

CONCLUSION

Based on the public risk reduction and value/impact score, this issue would have a medium priority ranking. However, the occupational dose increases associated with this issue far outweigh the public risk reduction and this issue should remain as a LOW priority issue until new data on the severity of the concern is available.

REFERENCES

16. WASH-1400 (NUREG-75/014), "Reactor Safety Study, An Assessment of Accident Risks in U.S. Commercial Nuclear Power Plants," U.S. Nuclear Regulatory Commission, October 1975.

44. NUREG-0705, "Identification of New Unresolved Safety Issues Relating to Nuclear Power Plant Stations," U.S. Nuclear Regulatory Commission, June 1981.

64. NUREG/CR-2800, "Guidelines for Nuclear Power Plant Safety Issue Prioritization Information Development," U.S. Nuclear Regulatory Commission, February 1983.

Enclosure 2

UNITED STATES
NUCLEAR REGULATORY COMMISSION
ADVISORY COMMITTEE ON REACTOR SAFEGUARDS
WASHINGTON, D. C. 20555

July 15, 1987

Mr. Victor Stello, Jr.
Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Stello:

SUBJECT: ACRS COMMENTS ON THE EMBRITTLEMENT OF STRUCTURAL STEEL

Surveillance samples of steel used in the pressure vessel of the High Flux Isotope Reactor (HFIR) at the Oak Ridge National Laboratory recently have shown that the nil-ductility transition (NDT) temperature of steel irradiated slowly at 120°F can rise much more rapidly with exposure to fast neutrons than would be expected from the available experimental work obtained in test reactors. This appears to be due to two causes:

- a flux rate effect (A lower fast neutron flux embrittles more than the same fluence accumulated at a much higher flux in test reactors.)
- the difference in temperature (550°F for commercial reactor pressure vessels vs. 120°F for the HFIR)

This has led to a significant shift in the NDT of the steel at a fast neutron fluence lower by roughly a factor of 20 than that predicted by the correlations used in the past for low temperature irradiations. This acceleration is independent of the copper content of the material. This suggests that steel structures outside the pressure vessel in commercial nuclear power plants may have embrittled where such behavior was not expected. We believe it would be prudent for the NRC to do the following:

1. Determine if the brittle failure of any structural steel component near the outside of the primary pressure boundary would have safety significance.

2. Determine, using the low temperature irradiation data now available from test reactors, whether an increase in the fast neutron fluence by a factor of 10-100 would be predicted to give brittle behavior in these components.

3. Implement a research program which would assemble better information on the rate of shift of the NDT of structural steels in

commercial nuclear power plants at these lower rates and temperatures.

4. Include consideration of the accelerated shift in NDT as part of the evaluation of structures in the program on plant aging.

Sincerely,

W Kerr

William Kerr
Chairman

C Z Serpan

Enclosure 3

AUG 04 1987

MEMORANDUM FOR: Dr. William Kerr, Chairman
Advisory Committee on Reactor Safeguards

FROM: Victor Stello, Jr.
Executive Director for Operations

SUBJECT: ACRS COMMENTS ON THE EMBRITTLEMENT OF STRUCTURAL STEEL

Your letter of July 15 on low temperature low-dose-rate irradiation of reactor structural steels correctly focused on the important issue emanating from the HFIR study that applies to operating commercial LWRs. That issue is whether the appearance of a dose rate effect for low temperature irradiation translates to a possible unexpected increase in the embrittlement of reactor vessel support structures (RVSS) that could pose a problem for safe continued operation of LWRs. We have therefore initiated actions to assemble information and make such analyses as necessary to make this assessment. The essential elements of the effort are shown in the enclosure. We have assigned the Heavy Section Steel Technology Program staff at Oak Ridge overall responsibility for the work, with important contributions to be provided by Argonne National Laboratory in the determination of mechanical properties of the Shippingport reactor neutron shield tank. Within NRC, the Office of Nuclear Regulatory Research will manage the effort. Oak Ridge believes that they can provide us with an initial response on the analysis portion of the work by September 4, with a more complete response by the end of September. We are proceeding to obtain material from the Shippingport reactor shield tank for validation as rapidly as the operations schedules at the reactor site will allow. Presently, we believe that it will require several additional months to gain access to the reactor and retrieve the material for machining and testing. Thus, the validation part of the effort could be delayed until the end of the year. In summary all the issues raised in your letter will be considered in the conduct of this safety assessment. I will be in direct communication with you concerning the results of the work.

Your letter helps to focus some assessments currently being made by the staff on embrittlement characteristics of those materials for aging and for extended service life. While we have been aware for many years of the higher embrittlement for steels irradiated at lower temperatures as was the HFIR vessel, it is only more recently that we have also begun to observe higher rates of embrittlement for vessel steels irradiated for longer times at lower dose rates. For example, only power reactor surveillance data are now being proposed as the basis for trend curves in Regulatory Guide 1.99, Revision 2 "Radiation Embrittlement of Reactor Vessel Materials" because they are a distinct body of data separate from test reactor data, and because they show more embrittlement than the test reactor data. Also, data obtained to date from the cooperative program with the MPA-Stuttgart in the Federal Republic of Germany on the Gundremmingen reactor vessel material also show somewhat more embrittlement than would be expected for the fluence received.

As you well know, the staff is actively engaged in preparing for evaluation of applications for significant extension of operating life beyond the original 40 year license period. One of the most important aspects of that evaluation is radiation embrittlement of the reactor vessel and other components subject to neutron flux during service. Because of the recent information suggesting the low-flux-induced dose-rate effect, this will be studied much more intently and incorporated into aging and extended plant life evaluations.

Original signed by
Victor Stello

Victor Stello, Jr.
Executive Director for Operations

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RADIATION EFFECTS ON REACTOR VESSEL SUPPORT STRUCTURES (RVSS)

Objective: To make a rapid assessment if there is a safety problem with RVSS subject to neutron radiation in consideration of a dose rate effect and low temperature irradiation.

Technical Issues:

- Flux and fluence in RVSS areas currently and at EOL
- Materials and mechanical properties of RVSS
- Embrittlement trends of RVSS materials
- Estimated dose rate effect and application to RVSS embrittlement trend
- Stresses and loadings on RVSS in normal operation and accidents
- Consequence to safety and safe shutdown of brittle failure of RVSS

Experimental Validation:

- Measure embrittlement of Shippingport shield tank material
    - Absolute NDT temperature
    - Transition temperature increase (using exterior tank material for reference)
    - Identify material composition and detailed chemistry
    - Determine fluence, flux and exposure history
    - Assure irradiation temperature

Integration and Assessment:

Combine material embrittlement trends with accident loadings to predict possible fracture of RVSS, and determine if such failure has an impact on safety and safe shutdown. Validate calculations and predictions using Shippingport material and data.

Initial Technical Assessment	- ORNL	September 4, 1987
Final Technical Assessment		September 30, 1987
Shippingport Validation Data	- ANL	December 31, 1987

E. Beckjord
007-N/L

Enclosure 4

OCT 07 1987

MEMORANDUM FOR: William Kerr, Chairman, ACRS

FROM: Victor Stello, Jr., EDO

SUBJECT: ACRS COMMENTS ON THE EMBRITTLEMENT OF STRUCTURAL STEEL

In our response to you on August 4, we described the actions underway and being planned to take account of neutron embrittlement of reactor support structures. One important action was a review and assessment of the current state of knowledge of flux, fluence and embrittlement relative to the materials and conditions of neutron shield tanks and support columns that form the primary elements of concern for reactor support structures.

We have now received a report from the HSST Program Staff at Oak Ridge which summarizes the technical information they have assembled relevant to the issue of low dose rate embrittlement of the steel in the support structures of LWRs. A copy of that report is enclosed. The ORNL summary coincides with our evaluation that the neutron shield tanks and support structures do not appear to pose any safety problems. The embrittlement can be conservatively predicted as an increase in transition temperature of the steel of as much as 400°F, based on extrapolation from the HFIR data. This is a factor of 2 to 3 times as much embrittlement as might have been predicted prior to the revelation from the HFIR surveillance program and represents an embrittlement rate 10 to 20 times higher than for test reactor irradiations. The fluence at the HFIR vessel is close to the predicted value, but the flux is 10 to 100 times less than a power reactor cavity region (where the support structures are located) and a factor of 10^4 less than typical test reactors. With the flux reduction schemes now in place, however, the fluence in the shield tank and support column region might decrease about an order of magnitude, with a corresponding decrease in the embrittlement. These structures are in compression, so even with a 0.2 g earthquake, the tensile stresses generated appear to be too low for fracture initiation. The only way to predict enough tensile stresses to initiate fracture of these structures is from the jet forces from a large LOCA of the main cooling lines. By this time, however, the reactor would already be in a serious accident situation, so that failure of the support columns or shield tanks would have little effect.

Clearly, an embrittlement level of some 400°F in the support structures is not a welcome situation. We will incorporate this issue into the RES Materials Engineering Branch programs on fracture, irradiation effects, and neutron dosimetry, to refine the predictions and structural implications, with the idea of developing recommendations for limits on embrittlement or methods for mitigation such as heating of the shield tank water and support columns. We note that such a "fix" was already proposed for resolution of "Issue 15," Radiation Effects on Reactor Vessel Support Structures, NUREG-0933, November 30, 1983, a copy of which is enclosed.

Original signed by
Victor Stello

Victor Stello, Jr.
Executive Director for Operations

Enclosures:
1. ORNL Letter Report
2. Issue 15

cc w/encls: P. G. Shewmon

bcc w/encls: VStello EDO r/f
EBeckjord EDO 3025
GAArlotto Murley
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Enclosure 5

ACRSR-1281
PDR

UNITED STATES
NUCLEAR REGULATORY COMMISSION
ADVISORY COMMITTEE ON REACTOR SAFEGUARDS
WASHINGTON, D. C. 20555

December 8, 1987

Mr. Victor Stello, Jr.
Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Stello:

SUBJECT: ACRS COMMENTS ON MEMORANDUM FROM VICTOR STELLO, JR., EDO, DATED OCTOBER 7, 1987 REGARDING THE EMBRITTLEMENT OF STRUCTURAL STEEL

We are concerned and perplexed by your memorandum of October 7 (referenced). There you conclude that, "the neutron shield tanks and support structures do not appear to pose any safety problems. The embrittlement can be conservatively predicted as an increase in transition temperature of the steel of as much as 400°F." You support your conclusion with the statement, "These structures are in compression, so even with a 0.2 g earthquake, the tensile stresses generated appear to be too low for fracture initiation."

Studies indicate that the highest risk of sudden pipe rupture in the primary system arises from the failure of supports of a major component. We can see no reason to be sanguine about the safety of operating nuclear power plants with the largest, heaviest component in the primary system supported on a structure, parts of which are fully brittle. This is unsafe by any type of analysis. The average stress may be compressive, but it isn't the average stress which would determine the failure of the structure. These supports are welded structures so there are regions with tensile stresses as high as the yield stress. They operate in a temperature gradient so there will be thermal stresses which are tensile in the cold (less ductile) regions. They are uninspected so we have no real idea of what kinds of flaws are present, and flaw size is critical in any meaningful failure analysis.

It would be imprudent to operate nuclear power plants with brittle structures supporting the pressure vessels. We recommend that an early effort be made to gain answers to the following questions:

1) Is the temperature of the support structure of the reactor pressure vessel in any operating plant now below its nil ductility transition temperature (NDTT)?

2) Will the temperature of the support structure of the reactor pressure vessel in any operating plant drop below its NDTT before the plant's license expires?

We hope and suspect that the answer to the first question is "no." However, it is not clear that we know this with any certainty. The research program mentioned in your memorandum is necessary and desirable, but it is not clear that it will answer the safety-related questions noted above in a timely manner.

Sincerely,

W Kerr

William Kerr
Chairman

Reference:
Memorandum from Victor Stello, Jr., EDO, to William Kerr, ACRS, dated October, 7, 1987, Subject: ACRS Comments on the Embrittlement of Structural Steel

Enclosure 6

Nuclear Regulators, Scientific Advisers Argue Over Reactors' Structural Safety

By Bill Paul

Staff Reporter of The Wall Street Journal

A study suggesting that nuclear reactor supports may grow brittle much faster than expected has started a fight between the Nuclear Regulatory Commission and its scientific advisers over nuclear plant safety.

The study, by the federal Department of Energy's Oak Ridge National Laboratory, also raises questions about the NRC's relationship with the nuclear industry, and about NRC plans to extend the life of existing commercial reactors.

The study found that, in a test of the steel to be used in structural supports for the reactor vessel containing the Oak Ridge laboratory's test reactor, the steel was turning brittle at a much faster rate than predicted. A vessel houses a power plant's nuclear fuel and sits on steel supports that can be long or short columns or other designs. The steel becomes brittle over time because it's exposed to a constant neutron bombardment.

If very brittle supports were to fail, cooling-water pipes would rupture, releasing radioactivity into the containment building, which regulators have indicated could fail during the early stages of a severe accident.

In a recent letter to William Kerr, chairman of the NRC's Advisory Committee on Reactor Safeguards, Victor Stello, the NRC's executive director of operations, acknowledged that the "embrittlement" problem "is not a welcome situation." However, Mr. Stello said the problem does "not appear to pose any safety problems."

Mr. Kerr disagreed, telling Mr. Stello by return mail that he was "concerned and perplexed" by Mr. Stello's letter. "It is not clear that we know . . . with any certainty" that all reactors are safe, Mr. Kerr wrote. While he doubted that any supports were yet fully brittle, Mr. Kerr urged the NRC to launch an immediate investigation, rather than fit the problem into longer-term research, as Mr. Stello proposed.

A spokesman for Mr. Kerr said his letter speaks for itself. An NRC spokesman said only that a response to Mr. Kerr's letter is being prepared. James Asselstine, a former NRC commissioner and now a Wall Street utility analyst, said Mr. Kerr's letter was "much more critical" than the usual letter from a scientific adviser.

Richard Cheverton, a senior engineer at Oak Ridge, said Mr. Stello misrepresented Oak Ridge's position when he told Mr. Kerr that the Oak Ridge study backs up NRC's assessment that support-structure brittleness isn't a safety problem. "My letter (to the NRC) said there might be a problem" in "some" plants, Mr. Cheverton said, adding that some designs "look suspicious."

Mr. Cheverton thought this misrepresentation might have stemmed from a "misunderstanding." But he also said Mr. Stello's letter reflected the nuclear power industry's position that there isn't a problem in such structures. Last month, a House subcommittee charged the NRC with showing "an unhealthy empathy for the needs of the nuclear industry to the detriment of the safety of the American people." The NRC denied it.

Mr. Cheverton also said the Oak Ridge study is "very significant" for NRC's plans to extend the life of existing commercial reactors beyond their 40-year license. Noting that the "embrittlement" problem wasn't predicted by anyone, Mr. Cheverton said Oak Ridge has recommended that a number of nuclear power plants be studied to determine the full extent of the problem, adding, "We believe it's a real problem, that our data are good."

But a spokesman for the Electric Power Research Institute, the electric utility industry's research unit, said the Oak Ridge findings have limited significance for the NRC's plant-extension plans. The study "could have some potential impact (but) on a relatively few number of plants," the spokesman said.

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Enclosure 7

JAN 28 1988

MEMORANDUM FOR: William Kerr, Chairman, ACRS

FROM: Victor Stello, Jr., EDO

SUBJECT: ACRS COMMENTS ON THE EMBRITTLEMENT OF STRUCTURAL STEEL IN REACTOR SUPPORT STRUCTURES

This memorandum is in reply to your December 8, 1987 letter concerning the embrittlement of structural steel in reactor support structures. In summary, we have restudied the 1983 NRC analysis of this issue as well as the more recent ORNL data that emerged from the HFIR analysis, and, as discussed in more detail below, our judgment is that this issue does not constitute an immediate threat to the safety of nuclear power plants that the NRC has licensed.

With regard to the two questions posed in your letter on the current and future status of the NDTT of the reactor support structures, our responses are:

(1) We have not studied enough plant specific information to unequivocally answer this question; the generic analyses that we have done to this point have not led us to identify any specific plants where the support system NDTT is above the operating temperature.

(2) Our judgment is that the NDTT of the support system structure in some plants may exceed the operating temperature before the end of the plant license.

We note that both of these responses are judgmental because we do not yet have sufficient information to be more definite, but we intend to perform such plant specific analyses in our continuing program.

We have responded to your questions as you posed them -- in the context of support structure material NDTT relative to the operating temperature of the support structure. While we agree that NDTT can provide a convenient indication of fracture toughness, and that one can put the problem in perspective by referring to NDTT, we note that resolution of this issue will be done in terms of a comprehensive fracture mechanics analysis, combining the stresses, the material properties (of which the NDT temperature is an important part), and a flaw size large enough to initiate a fracture.

Based on the analyses that have been performed and on our engineering judgment, we believe that the embrittlement of reactor vessel support structures does not pose an immediate threat to the safety of nuclear power plants. An important consideration that has contributed to our belief is that the failure of vessel supports does not lead to the failure of the piping. Work done by LLNL on a different project used a modelling assumption that support failure automatically resulted in piping failure. For that project, this was a conservative, simplifying assumption. The staff has reviewed other analyses that consider the effects of component support failure on pipe breaks. Those analyses show that support failure is not likely to result in pipe failure. Further, recent structural analyses performed by the staff, and employing very conservative assumptions, show that reactor vessels can be supported on their inlet and outlet piping alone, without benefit of the support structures. In addition, our preliminary investigations indicate that shield-tank and column supports, although exposed to neutron fluxes at mid-height of the core, and skirt-type supports have a low likelihood of failure because (1) there is a large degree of redundancy associated with these designs, (2) the loading for these designs is primarily compressive, (3) the columns have no welds and essentially no thermal stresses in the high-flux zone, and (4) the end-of-life fluence for the skirts is very low.

Investigations regarding the impact of the HFIR data on the likelihood of failure for other vessel support designs are still underway. While we recognize that there may be tensile stresses within the structures that could cause cracking, and that there may be more embrittlement than originally anticipated, we do not believe that there is an immediate threat to the safety of nuclear power plants.

The Department of Energy is aware of this issue of embrittlement of reactor support structures having recently conducted a workshop on this topic at Sandia National Laboratory. The conclusion of the workshop was that there is no immediate problem with LWR support structures. However, the workshop focussed primarily on shield tanks and reached its conclusion primarily on the basis of industry work which did not emphasize embrittlement rate effects, nor did it include some of the additional sources of tensile stresses that we have been considering such as welding residual stresses or excessive friction in the slider assembly. EPRI has prepared an analysis of the support structure embrittlement on behalf of the industry that shows an increase in NDTT of 200°F for a 40-year life rather than the 400°F as determined in the ORNL work. We must point out that at this time, our contractor ORNL has reviewed the EPRI analysis and does not agree with it. EPRI, in cooperation with the NUPLEX Technical Subcommittee is, however, continuing to investigate the impact of embrittlement on the neutron shield tank and columnar support designs.

The NRC view of the DOE and industry work is that while we agree with the conclusion of no immediate safety problem, we are working to develop an adequate data base of information on designs, toughness, embrittlement, loads and flaws so that we can make a prompt and correct assessment of the situation.

We are actively researching this issue with the objectives of (1) identifying those plants with support structures that currently are susceptible to brittle failure at the operating temperature, (2) identifying those plants with support structures that may become susceptible to brittle failure at the operating temperature, and (3) defining appropriate actions for those plants. To achieve the first two objectives, we have asked the ORNL HSST Program staff to summarize the reactors by categories of support structures and submit, by February 1988, an estimate of time and cost for analysis of up to five distinct support structures. Our intent is to complete the analyses by the end of FY88. The ORNL analyses will include considerations of rates of embrittlement, peculiarities of support structures, variability of both the materials involved and the potential loads, and combinations of stresses resulting from fabrication effects and normal and accident loading conditions. From the results of these analyses, we expect to be able to achieve our first two objectives. Subsequently, the staff will define appropriate actions for any plants that have, or are expected to have, supports susceptible to brittle failure.

The issue of support structure degradation involves the combined effects of low dose rate, low temperature, and spectrum softening on irradiation damage; analyses will make use of the HFIR results as these are the only such results currently available which include at least combined low dose rate and low temperature effects. Spectrum softening effects will be included in the ongoing research program. Final resolution of these questions on combined effects will require several years of work before enough data can be developed to provide a confident answer. A principal reason for the extended time for resolution comes from the need for study of materials from decommissioned reactors, such as the testing of steel to be removed from the shield tank of the Shippingport reactor. We plan to remove the samples in the Spring of 1988 with the testing to follow as soon as practical. Samples from other reactors undergoing decommissioning will be obtained and tested as they become available in the future. We also are in touch with Naval Reactors to determine if they have any pertinent information which could be shared with us on this issue.

Finally, the staff will review the regulations covering protection against brittle fracture for components and their supports and will review whether further requirements are needed, such as inspection or sampling of materials.

As we continue to develop pertinent information on this subject, we will keep you informed.

Original Signed by
V. Stello

Victor Stello, Jr.
Executive Director for Operations

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Enclosure 8

UNITED STATES
NUCLEAR REGULATORY COMMISSION
ADVISORY COMMITTEE ON REACTOR SAFEGUARDS
WASHINGTON, D. C. 20555

March 15, 1988

The Honorable Lando W. Zech, Jr.
Chairman
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Chairman Zech:

SUBJECT: ACRS COMMENTS ON EMBRITTLEMENT OF STRUCTURAL STEEL

There has been a recent exchange of letters between the ACRS and the NRC concerning the possibility of threats to the safety of nuclear power plants due to the more rapid than expected embrittlement of pressure vessel supports from radiation at low temperatures. During the 335th meeting of the ACRS, March 10-12, 1988, we heard presentations from the NRC Staff on its further evaluation of this matter. Our Subcommittee on Metal Components met on February 18, 1988 to discuss this matter.

We believe that the program the NRC Staff is undertaking to resolve this matter is appropriate. There are clearly important uncertainties remaining but the effort being implemented should generate the information needed in a timely manner. We would like to be kept informed on the progress and resolution of this matter.

Sincerely,

WKerr

William Kerr
Chairman

References:

1. Letter dated July 15, 1987 from William Kerr, ACRS Chairman, to Victor Stello, Jr. Executive Director for Operations, U.S. NRC, Subject: ACRS Comments on the Embrittlement of Structural Steel
2. Memorandum dated October 7, 1987 from Victor Stello, Jr., Executive Director for Operations, U.S. NRC, to William Kerr, ACRS Chairman, Regarding the Embrittlement of Structural Steel
3. Letter dated December 8, 1987 from William Kerr, ACPS Chairman, to Victor Stello, Jr., Executive Director for Operations, U.S. NRC, Subject: ACPS Comments on Memorandum from Victor Stello, Jr., EDO, dated October 7, 1987 Regarding the Embrittlement of Structural Steel

Senator **Exon**. Let me insert something here. I am advised by staff, Senator Nunn, who is the chairman of the committee and was directing the inquiry on this, not the current chairman sitting here.

Senator **Wirth**. I understand.

Senator **Exon**. So, I do not have all of these answers. I am advised that we do have excerpts from some of this from time to time. Whether or not we have all of the details or not, I do not know. I guess the question centers around whether or not we have the time or the resources to check out every allegation that is being made from a whole series of sources. I am not saying that those are not important, and I do not want to gloss over any of these, nor do I think Senator Nunn does.

I believe that with the limited staff time available that we did everything that we could to come up with the basic needs of those of us who had asked these questions. However, as a member of the committee, Senator Wirth, you and others have every legitimate reason to ask for any additional information that you see fit. It would be up to the chairman of the committee as to how far and how much time we want to spend on all of these matters.

Senator **Wirth**. Mr. Chairman, I appreciate that response. I know that the committee has been deeply involved in trying to get the authorization bill through the committee and through the floor and through conference. And that just happened, and that is on the floor right now.

I think we do have to think seriously about the question that you asked: how much work do we want to do on this? I find it serious, when the ACRS Chairman is concerned and perplexed. I think we ought to give Mr. Stello an opportunity to respond. I think when the senior engineer at Oak Ridge says that Oak Ridge's position has been misrepresented, that is a serious allegation, and Mr. Stello ought to have the opportunity to respond to it.

Senator **Exon**. From what I know of this nomination I take it that some of the controversy that surrounds Mr. Stello has to do with some very strong differences of opinion between probably well-meaning and well-qualified individuals, as to how a particular matter or a particular decision was made or not made, depending on the point of view. It is controversial, as our whole nuclear energy industry has been. This is not particularly surprising to me.

I used to have that difficulty when I was Governor of Nebraska. It is a little bit more difficult being in the executive position than a legislative position, for I found quite frequently that members, key members, of my staff as Governor would have strong differences of opinion among themselves, and when they would be together, they would speak in very gentlemanly or lady-like tones. But when they came to see me independently, it was quite another matter.

Therefore, I have felt—and maybe I am wrong—that many of the allegations that have been raised here were either personality conflicts or legitimate differences of opinions on matters that were tremendously important. And I can see how Mr. Stello, being a strong executive type that he is, how those would come about. And possibly, Senator Wirth, I am one of those who have not delved into the matters that you are raising quite enough. But, at least, that is the way that I have approached it.

Senator WIRTH. Mr. Chairman, I appreciate that statement. I also appreciate the fact that we have a new set of priorities at the Department of Energy regarding the nuclear weapons complex.

We are asking the Department of Energy, and Secretary Watkins, to do the job very carefully and very completely. We are asking him to exercise enormous care. And it seems to me, as we make that request, we have an obligation to do the same thing from the committee. We must make sure that we are exercising the same sort of care in putting on the seal-of-approval or confirming Mr. Stello's nomination. This is, as you know, an enormously important nomination. It is a very important position. I would say next to the Secretary's job, it is the most important job in the Department of Energy. And I think we have an obligation to look at all of these questions. And I am pleased that we will have these documents; we will supply them to Mr. Stello and make sure that we are doing our homework as carefully as we would expect the Department of Energy to do it.

Mr. STELLO. May I respond?

Senator WIRTH. Please, Mr. Stello.

Mr. STELLO. First, I think it is important to recognize the document you are dealing with. As the Executive Director, the information flow comes from the staff-at-large, which is 3,300 people, prepared by a number of people. And various memorandums are written, which go to the Commission, to the ACRS, and a lot of other places.

As EDO, I have to sign a lot of those. One of the particular documents that you are now referring to is one such document, prepared by various people in the staff on an issue of embrittlement of vessel supports. However, I think you will find that I had a very strong view that the staff was not doing enough in this issue and strongly urged that more needed to be done, not less.

The way the letter was written, and I think the characterization made by the ACRS as well as the others from Oak Ridge who were involved in that study, created a problem that should not have occurred. It was a poorly written document. I will take responsibility. I signed them. But to suggest that you are looking at activities that involve me personally, or that I am able to do all of that work all by myself, that I was that materials expert that did that work, that just is not so.

Senator WIRTH. I am not suggesting that, Mr. Stello. I am saying——

Mr. STELLO. It was a document that should not have been——

Senator WIRTH [continuing]. Here is an issue that has arisen——

Mr. STELLO. It was indeed issued, and it has an explanation.

Senator WIRTH. And we have an obligation——

Mr. STELLO. But I am trying to make——

Senator WIRTH. If we are turning over a new leaf in the whole process of the nuclear weapons complex, we have an obligation, I think, to turn over a new leaf ourselves. It is time that Congress exercise the kind of careful oversight that we would expect you to exercise over the nuclear weapons plant. And if nothing else, we cannot say to other people, "watch what we do not do. Just do it anyway. We are going to have one standard. And you are going to have another."

I am just saying that there are some very important things that we ought to be looking at. We ought to be thorough about this, just as we are going to expect you, if you are confirmed, to be thorough as well. But I want to have those documents. I think it is only fair to you, that you have the ability to and the time, or the documents, so you can respond to allegations that have been made.

Mr. STELLO. Surely.

Senator WIRTH. Apparently, we have two here that are not among the 14. We have the one of the ACRS letter to Lando Zech, maybe that is one of the 14. We have the Kerr letter. He is another ACRS Chairman, in early 1988, safety procedures. These are both relatively recent. And then we have the third part, the Cheverton report, which is the one you were just discussing on the structural engineering problems, which I understand your response. I do not think we have had a chance to look at that.

Mr. STELLO. Oh, I assure you. But there are many others, where there is disagreement between the staff and the ACRS. You might point those out, too. They go the other way. The BWR issue of whether the fixes were needed. I recommended a fix; the ACRS said you should not have one. This is not unusual where we, the staff, and the ACRS take different positions.

I assure you there are a large number of memoranda and issues that you can look at on both sides of the question. Where they say we do not go far enough or they say we go too far. Both ways.

RECOMMENDATIONS OF NRC COMMISSIONERS

Senator WIRTH. Let me move, if I might, Mr. Chairman, there were two NRC members or chairmen that were here this morning.

Mr. STELLO. They were former chairmen.

Senator WIRTH. Former chairmen. Who were they, Mr. Stello?

Mr. STELLO. The former chairmen that were here this morning were Chairman Zech and Chairman Rowden.

Senator WIRTH. And is Mr. Gilinsky a former chairman or is he a former commissioner?

Mr. STELLO. He is a former commissioner. I do not believe he was ever a chairman.

Senator WIRTH. And Mr. Bradford?

Mr. STELLO. A commissioner.

Senator WIRTH. He was a commissioner. And Mr. Asselstine?

Mr. STELLO. A commissioner.

Senator WIRTH. He was a commissioner. Now, have those three gentlemen, to your knowledge, all come out in opposition to your appointment? Do you know?

Mr. STELLO. I have no knowledge. Excuse me—I have talked to one of them, and only one. He happened to be at the Department of Energy and asked to say hello to me. I went up to an office to see him. And since I was aware of it, and he was there, I could not resist but to ask him, and I did. I could tell you what his response is, if you are interested.

Senator WIRTH. Well, whatever you want. It is my understanding that we have at least three former commissioners who have come out stating that they did not think that you ought to be confirmed.

I do not know if this is correct or not. We have not asked to investigate——

Mr. STELLO. I can tell you it is not correct with respect to Commissioner Bradford. He has told me he authorized no one to make any such statement either way on his behalf in support of or in opposition to. He is the only one I have talked to.

Senator WIRTH. Who was the one that you met? Was that Mr. Bradford at the Department of Energy that you ran into the other day? You were just saying that in the Department you ran into somebody the other day?

Mr. STELLO. It was Commissioner Bradford.

Senator WIRTH. And he told you at that time that he was neither opposing or supporting?

Mr. STELLO. He had not authorized anyone to speak on his behalf in either to support me or in opposition to me.

Senator WIRTH. Has he, himself, made any statements in support or in opposition?

Mr. STELLO. I will tell you, I asked him what his view was, and I will tell you what he told me, to the best of my recollection. He said, "Vic, based on my knowledge of what you did, when you were at the NRC, I was satisfied. And on that basis I would not find a reason to oppose your nomination. However, I have read a lot of things in the newspaper that I do not know about, and they sound serious. And I would reserve judgment with respect to those issues."

Which I found perfectly fair that he ought not to be expected to make a judgment about issues he did not know about. But he did make the judgment, and offered the judgment with respect to his knowledge of my work, while he was at the Nuclear Regulatory Commission. And he said on that basis he would not oppose. That is the gist of the conversation I had with him. I have not spoken to either of the other two Commissioners. And I am not aware, if they, in fact, have authorized anybody to speak on their behalf, either against me or for me. I have no knowledge.

Senator WIRTH. Or if they themselves have spoken for——

Mr. STELLO. I have no way of knowing it. The only one I have spoken to with respect to that particular issue——

Senator WIRTH. And you worked pretty closely with the members of the Commission?

Mr. STELLO. Oh, yes, sir.

Senator WIRTH. So, you would have known them very well.

Mr. STELLO. Yes, sir.

Senator WIRTH. So, presumably, they would be good sources for the committee to know not only the two chairmen that came in today in support of your nomination but others who, like Mr. Bradford may say, well, you know on balance, I guess so, or whatever. I do not want to quote Mr. Bradford, but that is the feeling I am getting from you. The other two that I had understood, Mr. Gilinsky and Mr. Asselstine, had come out in opposition. And there are people who would——

Mr. STELLO. I am not aware of any basis to make that statement.

Senator WIRTH. The point that I am making is that members of the Commission and the Chairman, in particular, would be people who would know of your performance very well and are people that the committee ought to talk to. Is not that——

Mr. STELLO. Yes, I understand there may be an opportunity for some of the former chairmen to, in fact, have an opportunity to testify before the——

Senator WIRTH. The allegation has been made that these other former commissioners are not in support and I would hope that we could get a thorough and complete picture on the committee.

Mr. STELLO. If I may make a comment, Senator. You have asked me a lot of questions here today. I need to observe, because you seem to be concerned about the compression of time, and how much time you really did have to deal with these issues.

When I made my courtesy call and we chatted, I asked you if there were any questions I could answer ahead of time. Had you availed yourself of that opportunity, I think I could have gone a long way in at least providing information which would have been helpful to you, so that we would not have this—I am getting this feeling that you are worried about, boy, there just is not enough time to do this. And it is disappointing to me because when I was at your office, the whole purpose was to try to find a way in which I could answer these questions, so this very kind of problem would not exist. I think it was important to note for the record that I was more than willing to do whatever I could to do that.

Senator WIRTH. I appreciate that.

Mr. STELLO. I am very disappointed that now there is this feeling, well, gee, there just is not enough time for us to go job looking, and that is upsetting to me. I thought I would make it clear. And now you understand why I have the reputation I have. I say what I think.

Senator WIRTH. Well, that is very fine. I appreciate that. And I appreciated your coming by the office. We had attempted to schedule that appointment a number of times. You had to cancel a number of times. I had to cancel a number of times. And we were both grateful to have the opportunity to get together.

The job that we have to do in terms of going through all of this material is very important. If you did not believe it was important you would not have prepared this very impressive book of answering all of the allegations.

Mr. STELLO. But I did that on the basis of what I knew. You are raising some other issues that I did not think were of any concern whatsoever, but they are to you. I could have disposed of them ahead of time.

Senator WIRTH. I am only sorry that they have not been raised before. I think that that is part of the job that all of us have to do.

I do not have this very extensive material that apparently came last night. That is what I understand. It came to us last night. We are just going around this again.

Also, we have not had in the committee the opportunity to receive either this information in a timely fashion, or, have the committee respond to and receive information, which was requested almost 2 months ago from the White House, from the Department of Justice. That information has not been made available, and that was discussed before.

Mr. Stello. Senator, I am just a simple coal miner's son from Pennsylvania. I do not understand all the sophisticated stuff. I do know that this information was provided to the committee last week, Thursday. I do not know why you did not have it. I do not understand, if there were issues, where the information was owed from the White House, why there has not been an effort to get that information. It would seem to me something as simple as a phone call saying, "Hey, we have had this information, you know, it is owed a long time, Mr. Secretary of Energy. Could somebody get it for me?"

Senator Wirth. Sounds pretty reasonable to me.

Mr. Stello. I said I am a simple country boy. I do not understand this sophisticated stuff. But if simple phone calls seemed to have been able to fix up this stuff, why you did not get the information that was provided Thursday of last week, I do not know.

Senator Wirth. It was not just me. I think it was all the members of the committee. And I think Senator Nunn had requested of the White House. I think that the usual procedure that is followed is that the chairman of the Armed Services Committee writes to the President and requests the information. That was 2 months ago. The information from the Department of Justice has not been forthcoming.

Mr. Chairman, I have a number of questions related to Three Mile Island, which I would like to submit for the record, if I might. There are some very significant—is this in one of the 14 allegations that are there?

Mr. Stello. It is in the FBI report dealing with that issue. I was told yesterday that it is here; the committee does have it. Senator Nunn's staff has a procedure for handling that information. It is available for any committee member to read it. The only way I can deal with those issues is to simply suggest to you that you need to look at the FBI report, and the committee has it.

Senator Exon. I would advise that all of that information, indeed, is here in the hands of the committee. Any committee member is privileged to look at it.

Senator Wirth. This is the information that Senator Nunn requested on the grand jury investigation?

Senator Exon. No, it is the information that you were just talking to Mr. Stello about.

Mr. Stello. It is the Three Mile Island investigative issue.

Senator Wirth. Investigation on Three Mile Island?

Senator Exon. Yes, that is what I was referring to. We do not yet have the information from the White House or the Department of Justice. And that is neither the fault of Mr. Stello nor is it the fault of the Secretary. The record should be clear that we just have not received all the information we should have from the White House. That is not unusual.

We have had a great deal of difficulty over a great number of nominees, both in this committee and in other committees that I am familiar with. The timeliness of information from the White House is not what we would like to see. I suspect that the White House has their plate pretty full from time to time also. And I do not suspect that they are trying to withhold any information.

I do wish that since the Secretary had been very patient, as had the nominee on this matter, that it would have been wise, I think, had we advised the Secretary and, therefore, Mr. Stello would have known before they came up here today and were blind-sided by the fact, as I understand it now, that this information had not been supplied. You did not know when you came here—at least, the Secretary has told me he did not know that there were any outstanding requests for information from anybody that had not been supplied. Was that your understanding, Mr. Stello?

Mr. STELLO. That is correct. And specifically, with respect to the information, as recently as last night, I was under the impression it was all here.

Senator EXON. Well, there was some other information, and possibly we should have let the Secretary or you know about that. We, the staff and the committee, simply followed the usual procedures. We got all the information that we had requested from the Secretary. We did not get all the information that we requested from the White House and the Justice Department. We should have made this clearer.

Mr. STELLO. Yes, sir.

Senator EXON. We will——

Senator WIRTH. If I might, Mr. Chairman.

Senator EXON. You had made a request. I do not know whether I responded to it. It certainly would be in order for you to submit the request in the——

Senator WIRTH. I did not know we had the FBI information. Has the staff had the opportunity to analyze that information from the FBI on the allegations and the investigation of Mr. Stello's role in the accident at Three Mile Island?

Senator EXON. The staff does not have access to the FBI information.

Senator WIRTH. Wait a minute.

Senator EXON. But Senator Nunn——

Senator WIRTH. We just were told, Mr. Chairman—excuse me, go ahead. They do not have them.

Senator EXON. Senator Nunn and Senator Warner do. I believe that that information would be certainly available as a discretion of the chairman to any member of the committee. It is not available to staff. I have not looked at it; I have not seen it. So the question that you ask would be properly referred to Senator Nunn or Senator Warner. If you would like to see it, Senator Wirth, I am confident that you could see it. But it is here.

Senator WIRTH. Can we do this, Mr. Chairman? There are a series of questions about Mr. Stello's role in the investigation in the accident at Three Mile Island. Some very severe allegations were made about that. I know that this investigation has been carried out. I have a number of questions about that. I have not seen the FBI file. Is there a way in which we might have these questions, which I think are of enormous import, looked at by our staff? I do not think that they have done that on this front or had the opportunity to do that. And then to see if the FBI investigation answers these questions, and if not, submit those to Mr. Stello?

Senator EXON. I see nothing wrong with that. But again I would emphasize that that would be a decision for the chairman of the committee, which I am not.

Senator WIRTH. I understand. I have these questions, then, Mr. Chairman. And I will submit those to the staff and ask that, if we do not have answers to all of these questions, that they then be submitted again, trying again to make sure all of the information is out on the record.

Senator EXON. That would be proper.

ROCKY FLATS

Senator WIRTH. Mr. Stello, you said in your opening statement that there are serious problems at Rocky Flats. What are the serious problems at Rocky Flats in your opinion?

Mr. STELLO. Are you talking about my prepared remarks that I submitted?

Senator WIRTH. There was a statement made this morning that there are serious problems at Rocky Flats.

Mr. STELLO. Yes. The reference to the statement that I made in answer to a question was that the Rocky Flats situation at the moment is very difficult.

There was a swarm of FBI agents and EPA agents coming down on the plant, identifying problems and environmental noncompliance issues which have been raised. I think that has created an enormously difficult situation. In addition, the performance of the contract there, based on what I have seen, has not been very good. A contract is now being set up to move in a new contractor.

Senator EXON. We have a new contractor there, do we not?

Mr. STELLO. Yes. A new contractor is there now. There is a new organizational system being set up at Rocky Flats on behalf of the DOE management to get better oversight. Based on what I have seen, the oversight by the DOE has not been good at all.

I sense, but I have not gone there, and I have not done a detailed review, from just the information I have seen, that there are some of the same kinds of questions and issues that have been raised at the Savannah River reactor with respect to the adequacy of procedures and training and competence. And they will all need to be taken care of. I think—I sense a sense of urgency. What I said in my opening statement is my commitment would be to put together a team of people and do the same kinds of evaluations and studies to identify these problems and get them corrected as soon as possible. I think I am particularly well-suited to do that. I have been involved in doing that a number of times. I sense a certain sense of urgency at doing it at Rocky Flats. I think it needs to be done.

Senator WIRTH. You do not have knowledge that you can give to us today on what some of those problems are at Rocky Flats?

Mr. STELLO. In terms of specifics?

Senator WIRTH. Yes.

Mr. STELLO. I think the procedures are lacking. I think the training is not adequate. I think the training needs to be improved, improved significantly. They need rather thorough reviews. The review that I read in terms of the criticality review that was done out there. I was kind of surprised at the magnitude of that problem. The amount of plutonium, especially, plutonium in slurries that was there, that potentially can raise criticality issues and how these kinds of conditions were allowed to exist in ventilation systems suggest to me the kinds of problems that I saw at Savannah River that suggest a thorough scrub.

Senator WIRTH. What do you think is the most immediate problem that we face at Rocky Flats, Mr. Stello?

Mr. STELLO. Dealing with, what I call the people issue: training, procedures, our safety culture——

Senator WIRTH. The issue that the Department of Defense and others at the Department of Energy have been in to talk to me about is the waste issue at Rocky Flats and what we are going to do with, when we reach the point of the storage of waste out there. Have you had a chance to look at that problem?

Mr. STELLO. Not really. Senator, remember what I said is that there is this new organizational component being put up together in the Department of Energy that is going to deal with waste issues. They are really handling that. I was answering the question from the point of view of safety. There are clearly problems as I understand them with respect to waste, dealing with difficulty in terms of limits that are set, and a volume of waste, and the ability to ship waste from the Rocky Flats site, which is going to be a big concern that has to be dealt with. I recognize that. But I was answering——

Senator WIRTH. That would fall under your bailiwick, as to what to do with that waste? That will be your responsibility?

Mr. STELLO. Correct. It will go to some new organizational structure that will be working that problem.

Senator WIRTH. But that will be working for you?

Mr. STELLO. No, sir. It would be working directly for the Secretary.

Senator WIRTH. The waste issue would be working directly for the Secretary?

Mr. STELLO. Yes, sir.

Senator WIRTH. But you will have responsibility for the operations of the plant?

Mr. STELLO. For the safety, yes, sir.

Senator WIRTH. Just for the safety?

Mr. STELLO. Well, the safety, the production, the environmental compliance and those things will be the responsibility of defense programs. But there is a lot of waste that has to be handled that is already at the plant. That particular waste and the processing, handling of that waste as waste, and the shipment of it is going to be under the cognizance of a new organizational component.

Senator WIRTH. Is it your opinion—I am not sure I quite understand that, but I am sure I will learn how the organizational parts fit in. If you are the Assistant Secretary for Operations—is that right? What is your title? What is your new title going to be?

Mr. STELLO. The position I am nominated for?

Senator WIRTH. Your full new title, yes.

Mr. STELLO. The Assistant Secretary for Defense Programs for the Department of Energy.

Senator **Wirth**. Okay, for Defense Programs. The Assistant Secretary for Defense Programs will not have responsibility for say, waste issues? Is that correct?

Mr. **Stello**. Yes. For example, WIPP, that facility will be transferred and the responsibility for it to a new organizational component that the Secretary mentioned in his opening testimony.

Senator **Wirth**. But you will have responsibility for Rocky Flats?

Mr. **Stello**. I will have responsibility for Rocky Flats.

Senator **Wirth**. And you will have responsibility for waste at Rocky Flats?

Mr. **Stello**. For the waste that is being generated, and processing is part of the process. But there is a lot of waste sitting there, right?

Senator **Wirth**. There is. That is correct. We are all concerned about that. Absolutely.

Mr. **Stello**. Now, what happens, and when is that waste going to go WIPP?

Senator **Wirth**. That is right. Who has responsibility for that?

Mr. **Stello**. The new organizational component.

Senator **Wirth**. Who is going to be running that?

Mr. **Stello**. I guess Secretary Watkins will decide that.

Senator **Wirth**. There is not somebody appointed to come into that job yet?

Mr. **Stello**. I think he has——

Senator **Wirth**. So we have orphan waste.

Mr. **Stello**. As I understand, I think what he mentioned this morning is that one of the things he is looking for is, I guess, and I think it would be legislation required to establish a new Assistant Secretary for that program.

Senator **Wirth**. In the meantime who is responsible?

Mr. **Stello**. In the meantime, Leo Duffy is working that problem directly for the Secretary.

Senator **Wirth**. So waste belongs to Mr. Duffy?

Mr. **Stello**. Correct.

Senator **Wirth**. I see the gratitude on your face, Mr. Stello. [Laughter.]

Mr. **Stello**. Yes, I think the Defense Programs problem, as I see it, is already very, very large, and having to deal with a waste problem as well as that, in my view, would detract significantly from really fixing up the problems as I see them in the many, many facilities that are still with Defense Programs.

Senator **Wirth**. I am almost finished, you will be happy to know, Mr. Chairman.

On the future of Rocky Flats and fixing it up to make it--can we, do you think, fix Rocky Flats up to the point of making it safe, or should it move?

Mr. **Stello**. I do not know. There is a modernization study, and that is one of the things that I think that they ought to hit head on.

Senator **Wirth**. Does not the direct 2010 study suggest that Rocky Flats——

Mr. **Stello**. I do not think the 2010 study that was submitted, in my view, is good enough. I think it needs to be completely redone.

Senator WIRTH. Are you all completely redoing now the 2010 study? How long is that going to take?

Mr. STELLO. I believe the current schedule—and I am trying to go from memory—I believe it is June or July of next year.

Senator WIRTH. We kept hearing about the results of the 2010 study from the previous administration. They put it off and put it off and put it off and released it after they got out of town. But you are going to do that pretty soon.

Mr. STELLO. At the rate I am going, I suspect I may be confirmed by then. But the process is very slow, so, I have no idea where I will be in June or July.

Senator WIRTH. Can you provide the committee with information on the cost problems in Building 371? You remember that Building 371 was the new processing facility at Rocky Flats——

Mr. STELLO. Yes, sir.

Senator WIRTH [continuing]. Which originally was going to have a budget I believe of about $75 million. We eventually spent about $300 million on the facility.

Mr. STELLO. I think it was closer to $400 million.

Senator WIRTH. The General Accounting Office came in and said that it was working at about a 5-percent efficiency. This came out at the same time as the coffee pots and the C5A. Do you remember that?

Mr. STELLO. Yes.

Senator WIRTH. Some wag out near Rocky Flats said we had an enormous coffee pot in our backyard at Building 371 in which the taxpayers had spent a vast amount of money and it does not work. The steel workers have been very helpful in isolating the kinds of problems that exist at Building 371. We got a very clear examination of that problem, or at least beginning examination, of the problem under Secretary Herrington. We thought things were going along. It has recently come to my attention that we are now going to have to spend literally hundreds of millions of dollars more on Building 371 beyond even what had been suggested. I would appreciate it if you would provide to us any data that you might have. Could you do that?

Mr. STELLO. I would be happy to find out.

Senator WIRTH. Ask the appropriate people at the Department of Energy to provide that information.

Mr. STELLO. Yes, I have been hearing the same things. In fact, what I have heard is that the amount of money that was projected to fix up the facility will exceed its original cost.

Senator WIRTH. That is right.

Mr. STELLO. But let me try to get rather than rumor or hearing, I will do the best I can to try to get——

Senator WIRTH. When you have the chance, or maybe the congressional liaison people who are here with you might be able to provide that.

Mr. STELLO. I will be happy to provide that for the record, yes, sir.

[The information follows:]

Building 371

The original cost to construct Building 371 was $215 million (as of November 1978). The cost estimates to renovate Building 371 are not precise but current estimates indicate that renovation costs will be in the range of $500-750 million.

Senator Wirth. Mr. Chairman, I greatly appreciate your patience this afternoon and that of Mr. Stello. I think that there are a variety of questions in front of us. Can you tell us, Mr. Chairman, what the schedule of the committee is on this issue?

Senator Exon. I do not know what the schedule of the committee is. We will have to check with the chairman on that. You are familiar with the hearing tomorrow? Or were you not here when we made that announcement? Maybe you were not. Two o'clock tomorrow afternoon in Hart 216, if I remember correctly, we will have a continuation of this hearing. In that hearing we will have witnesses in support of, some neutral, and some in opposition to the nomination. That is at 2 tomorrow afternoon. You are tied up in the morning, as you will remember, with regard to the hearing on the Battleship *Iowa.*

Senator Wirth. I know. We were talking earlier, Mr. Stello and I, about former commissioners. Are we going to be hearing from former commissioners on this issue?

Senator Exon. I have not seen the schedule of the witnesses. Are there any former commissioners on the list tomorrow?

Ms. Goodman. Senator, the committee has attempted to accommodate requests to testify both for and against the nomination. The committee has not, however, itself sought to seek out witnesses. And there are witnesses on both sides of the aisle.

Senator Exon. There are some. I thought there were some former NRC commissioners testifying tomorrow.

Senator Wirth. Again, I am a little concerned, Mr. Chairman, that as we are here following the usual committee procedures, this is, as Secretary Watkins said starting out this morning, a very unusual situation. It is unusual to have a Secretary come up and testify on behalf of one of the people in the Department. I for one believe that this is such a very important issue that we have to probably stretch a bit beyond that point in hearing from a variety of people.

I will look forward to tomorrow afternoon's hearing. I hope that we are getting the kind of broad input that I believe that we need.

I appreciate your patience, Mr. Chairman, and Mr. Stello. Thank you for being here. I am sorry this has taken so long. I feel as if both you and I can say that there are a lot of other things going on, and that we are waiting for the White House. There are events that come up, like the Armed Services bill. It seems to have slowed all of this down. I would hope that we can get a resolution of this. But clearly, until we are sure that we know what we are doing, I would suspect that that might be sometime in coming. We have to get all of the information that has been requested and have it analyzed by the staff. Thank you very much, Mr. Chairman.

Senator Exon. Thank you, Senator Wirth. I have just three questions that will not take a lot of time, Mr. Stello, and I want to at this time express the appreciation of the committee for this very long, very detailed day, and we appreciate your patience.

OVERFLIGHT OF FACILITIES

This is not a major consideration now, but it might be at some time in the future. Several months ago, during a hearing with the Secretary, I asked the question as to whether or not the Secretary knew or realized that there were no overflight restrictions on our nuclear weapons complex with the possible exception of the Pantex plant. It seems to me that while I have no firm opinion on this now, I am just wondering whether or not it is in the interests of the safety of these plants and the security of these plants to at least consider some overflight restrictions. As I understand it, with the possible exception of the Pantex plant, there would be nothing that would stop an airplane of any type from flying 1,000 feet or 500 feet or 200 feet or less over one of our plants. Do you believe that that is a concern or do you think not? I have no firm opinion on it. I just raise it again.

Mr. STELLO. Let me answer the question from my experience at the NRC. If they were doing it, I would get very upset.

Senator EXON. Well, I do not think they are doing it.

Mr. STELLO. And I would promise to look into the matter and I have just been given a note that we are, in fact, looking at that matter within the Department, and the Secretary is going to have a report ready to deal with this issue in December.

[The information referred to follows:]

Department of Energy
Washington, DC 20585

The Honorable Sam Nunn
Chairman
Committee on Armed Services
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

During my initial confirmation hearings on November 15, 1989, I informed Senator Exon that I would look into the matter of airspace restrictions over critical Department of Energy (DOE) nuclear facilities and submit a report on this issue during December.

I am pleased to provide you the enclosed report on the history and current status of the Department's airspace initiative. We have provided this report to the Federal Aviation Administration (FAA) staff and will continue to work together toward our goal of establishing new or expanded Prohibited Airspace (PAS) over nine additional DOE facilities. The FAA and DOE have agreed to proceed with a rulemaking to accomplish this goal.

As an integral part of the rule process, informal public meetings will be held at the nine locations from approximately mid-March to mid-April 1990. Although DOE and the FAA may be in general agreement on the DOE proposal, public opposition may be significant at some locations. We will consider, and make every effort to be responsive to, all public concerns. Realistically, we know that we will not be able to resolve all differences of opinion.

In our petition for PAS, we have based our altitude and boundary proposals on extensive discussions with our field element security staffs and have requested the minimum altitudes consistent with our security and safety needs.

After you have reviewed this report, I will be happy to brief you and your committee upon request on any aspect of this initiative. Of course, I will continue to keep you informed on this matter which is so vital to the continued integrity of the national defense.

Sincerely,

Victor Stello, Jr.
Principal Deputy Assistant Secretary
for Defense Programs

Enclosure:
As stated

cc w/enclosure:
The Honorable John Warner
The Honorable J. James Exon

REPORT TO THE SENATE ARMED SERVICES COMMITTEE
ON THE
BACKGROUND AND CURRENT STATUS OF
AIRSPACE RESTRICTIONS OVER DOE SITES

During World War II, prohibited airspace was established by Executive Order over all major facilities of the Manhattan Engineering District restrictions. In 1946, when the Atomic Energy Commission (AEC) was established, these reservations were continued for both security and safety reasons.

In the early 1950's, when the Savannah River Plant, the Idaho National Engineering Laboratory, the Nevada Test Site, Lawrence Livermore National Laboratory's Site 300, and the Tonopah Test Range were established, these also became prohibited airspace areas. The justification for continuing to prohibit overflights of major AEC sites was based on both security and safety considerations. From a security standpoint, the AEC prohibited overflights to protect highly classified activities from the threat of aerial photography.

Safety considerations related to both ground and flight activities. For example, aircraft flying over Los Alamos National Laboratory, the Nevada Test Site, and Lawrence Livermore National Laboratory's Site 300 could have been hit by shrapnel generated by high explosive or nuclear tests. At other sites like the Savannah River Plant, Idaho National Engineering Laboratory, Oak Ridge, and Hanford, there was concern that an aircraft crash into a plant or building would create a serious radioactive hazard. Another safety concern involved the danger to low flying aircraft near areas in the vicinity of burst reactor operations.

In 1958, all of the AEC's prohibited airspace areas, with the exception of the Nevada Test Site and the Pantex Plant near Amarillo, Texas, were converted to "restricted" areas. Restricted areas were different from prohibited areas in that overflights of sensitive sites by commercial and private aircraft were permitted during specified times at specified altitudes.

In 1962, as a result of declassification actions and an aircraft crash risk analysis, the restricted airspace over Oak Ridge was rescinded. Over the next several years, the restricted areas over Richland and Savannah River were reduced in size because of further declassification actions and the desire to provide more open airspace for use by commercial and private aircraft. With the termination of above ground nuclear testing, the prohibited airspace over the Nevada Test Site became a restricted area.

In the 1970's, an increase in world-wide terrorism prompted a reevaluation of security measures at principal Energy Research and Development Administration (ERDA), formerly AEC, sites throughout the country. Late in 1974, a special study was conducted to evaluate the threat posed by terrorists who might attack important nuclear sites. The study considered the possibility that terrorists might use helicopters or short take-off and landing (STOL) aircraft in an attempt to steal a nuclear weapon, a nuclear test device, or the special nuclear material that could be used to construct an improvised nuclear device.

Pantex was of most concern, but other sites which had special nuclear materials like Rocky Flats, Oak Ridge, Savannah River, and Richland were also considered. As a result of the terrorism study, ERDA security officials concluded that the continuation of existing special use airspace and the establishment of new special use airspace at key nuclear sites was advisable. In the spring of 1975, the major organizational elements involved with the airspace issue developed an agency position that special use airspace over key DOE nuclear sites was justified on the basis of national security.

Late in 1975, ERDA officials met with the FAA. ERDA's position was that: (1) airspace restrictions at the Idaho, Savannah River, and Richland sites would be drastically reduced as a compromise with FAA; (2) new altitude limitations should be established over the Rocky Flats, Pantex, and Oak Ridge plants; and (3) the restricted airspace over the Nevada Test Site, Lawrence Livermore National Laboratory's Site 300, and the Los Alamos National Laboratory should be continued for safety reasons. Early in 1976, ERDA formally requested these changes in a letter to the FAA.

The ERDA request for special use airspace over its key sites was limited to the establishment of minimum flight altitudes as opposed to the complete prohibition of flights over these areas. Thus, private and commercial aircraft could overfly the sites if they did not fly below a specified altitude. Aircraft which descended below the specified altitude would be reported. The intent of the ERDA request was to establish reasonable overflight restrictions which would encourage a high level of alertness by local security forces to intruding aircraft by limiting benign incursions into the airspace over key ERDA sites.

Over the objections of ERDA, FAA subsequently eliminated the airspace restrictions over Idaho, Savannah River, Richland, and Oak Ridge. The FAA decision to rescind the special use airspace at these sites was based on: (1) the probability that an aircraft which was experiencing an in-flight emergency while flying over a nuclear facility would actually impact the facility as a result of a crash was too low to justify an airspace restriction, (2) the FAA had not granted airspace restrictions over other health hazardous commercial facilities, and (3) special use airspace could only be administratively enforced and would not deter or prevent a determined intruder from violating the airspace over a nuclear site.

In 1982, the General Accounting Office (GAO) issued a report that was highly critical of DOE's safeguards and security program. The report identified serious management deficiencies and security flaws in the way the Department was protecting nuclear weapons, nuclear test devices, and special nuclear materials that could be used by terrorists to construct an improvised nuclear device. In addition to other security deficiencies, the GAO found that DOE nuclear sites were not being adequately protected against the threat of airborne intrusion by terrorists.

The GAO report stated:

> "DOE's weapons facilities are also vulnerable to penetration from the air. Although DOE has been successful in getting the Federal Aviation Administration to provide some restrictions, nuclear production plants

> are still not even afforded the same level of airspace protection[1] that is given to national parks, monuments, seashores, and other recreation or preserve areas . . . The lack of protected airspace means that action would not be taken against an intruding aircraft until a penetration team is on the ground. By that time valuable response time has been wasted and it may be too late to stop the penetration team from accomplishing its objectives."

The issuance of the GAO report was followed by a series of Congressional hearings in which special use airspace over DOE nuclear weapons plants was a major topic of concern. Congress was concerned that the airspace over DOE nuclear sites could be exploited by a group of terrorists who might use helicopters or airplanes to steal a nuclear weapon, a nuclear test device, or the nuclear material they would need to build an improvised nuclear device.

As a result of the GAO report and mounting Congressional pressure, the Department reevaluated the benchmark threat being used as the basis for the design of its safeguards and security systems and in January 1983, the Department's Assistant Secretary for Defense Programs issued a formal threat policy statement which identified several potential threats against which the Department was required to protect its nuclear programs and activities. The new policy statement characterized the nature of a range of potential adversaries including terrorists, criminals, psychotics, disgruntled employees, and even antinuclear protestors. The threat policy specifically stated that potential adversaries could be expected to use the range of modern transportation equipment in any assault against DOE nuclear programs and activities.

In 1984, FAA, at the request of DOE, published an Advance Notice of Proposed Rulemaking in the Federal Register to re-establish prohibited airspace at nine key DOE nuclear weapons complex sites. The proposed rulemaking met with public resistance. In addition to public concern, the FAA expressed their reservations concerning the rulemaking, particularly their doubt that the creation of prohibited airspace would stop a determined hostile intruder from violating the airspace over a DOE site. Contending that there is no way to positively determine whether or not an intruding aircraft is hostile or benign in enough time to stop a successful penetration, FAA concluded that the only possible security value of stopping overflights was the increased level of alertness of ground-based security personnel that could result from minimizing benign incursions into the airspace over DOE nuclear weapons complex sites. The FAA further argued that there were mechanisms short of prohibited airspace that could provide essentially the same level of protection to DOE sites by discouraging benign overflights. Based on the FAA position, DOE agreed to hold in abeyance its request for rulemaking to establish prohibited airspace over its key nuclear weapons complex sites pending a DOE review of the entire airspace issue. The Department's decision was predicated on the understanding with FAA that if security concerns continued to exist after the review was completed, both agencies would cooperatively explore alternatives to assure that safety and security concerns at DOE sites posed by or to aircraft were adequately addressed.

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[1] Note: Voluntary minimum flight attitudes have been established over many national parks, monuments, seashores, and other recreation or preserve areas. In 1983, the FAA established "National Security Areas" over the Idaho National Engineering Laboratory, the Hanford Site, Rocky Flats and the Savannah River Plant. Pilots were requested not to fly in these areas which were depicted on aeronautical charts below certain specified altitudes. The intent of establishing the new "National Security Areas" was to limit benign incursions of the airspace over these important DOE nuclear sites.

Although discussions between the agencies have never ceased, no specific initiative had been agreed to by the agencies. And with the recent status of the Department's dependence on its unique, non-redundant key facilities there is even more urgency for our needs.

Admiral Watkins, during his confirmation hearings in March 1989, responded to a question from Senator Exon concerning the lack of airspace restrictions over certain DOE facilities, by promising that he would look into the matter immediately.

The Department's Office of Safeguards and Security (OSS) began preliminary discussions with FAA relative to the establishment or expansion of PAS over 10 DOE nuclear facilities. During late summer of 1989, meetings were held with management and security representatives at each of the sites to determine the minimum boundary and altitude requirements which would be essential in the development of their protection strategy to thwart an airborne attack. During those meetings Lawrence Livermore National Laboratory's Site 300, which currently has Restricted Airspace and was being considered for enhanced restrictions, was deleted from the list. While DOE is responsible for many other facilities throughout the United States, nine facilities identified to the FAA represent the most critical nuclear facilities in the DOE complex, and attractive targets for terrorists.

The Department recognized at the outset that the mere establishment of PAS would not deter a determined airborne attack. Therefore, we have been working with Sandia National Laboratories to explore the availability of ground-based surveillance systems to install at selected facilities as an integral element of our strategy to enforce the PAS. We will also ensure that our protective forces receive the specialized training required relative to airborne denial and that this training is exercised sufficiently to provide us a high degree of confidence that our airborne protection system will function effectively.

On November 22, 1989, the Under Secretary forwarded the DOE request for PAS at the nine locations to the Administrator of the FAA (copy attached). On December 19, 1989, a meeting was held with the FAA staff to provide a classified briefing on the security and safety issues at each of the DOE facilities proposed for PAS. Subsequent to the briefing the following agenda was proposed, which identifies the actions and expected completion dates which we hope will conclude with the formal establishment of the new PAS requirements:

- 1/15/90: DOE will provide dates and locations for public meetings.
- 2/1/90: FAA will issue notice of public meetings in the Federal Register.
- 3/15-4/15/90: Informal public meetings regarding the nine DOE facilities.
- 5/15/90: Public comment period ends.
- 7/15/90: FAA review of comments in conjunction with DOE completed.

- 9/15/90: FAA issues Notice of Proposed Rulemaking.
- 11/15/90: Comment period following Notice of Proposed Rulemaking ends.
- 2/15/91: Final Rule issued.
- 8/15/91(approximately): Final Rule becomes effective, note: these dates will vary with the issuance of each updated sectional chart.

The FAA informed us at the December 19, 1989, meeting that problems still exist with the size of the DOE request for the Pantex, Savannah River, and Hanford Plants. The FAA noted that airways which cross the DOE facilities will be effected, but that they will attempt to review the DOE request and recommend alternative approaches.

In summary, both DOE and the FAA are working in close coordination toward the ultimate goal of establishing, or enhancing PAS over the most critical DOE nuclear facilities. It is recognized that our proposed timeframe exceeds the 90 days requested by your committee in the Senate Committee Report for the Defense Authorization Act of 1990. We believe that FAA and DOE have agreed on a schedule that will permit public participation in resolving this difficult matter.

Senator EXON. That takes care of that. Now, two last questions. During this morning's series of questionings, you said that there were two allegations included in your fact book that are directly related to you. You mentioned, I believe, only one of those. I believe that that was the Stello-White conversation. What was the other allegation which you did not mention, or missed?

Mr. STELLO. It was discussed in detail. It was the Fortuna matter, and there was considerable discussion of that matter, and I did not feel the need to go into it any further.

Senator EXON. But that was it?

Mr. STELLO. It was ventilated rather thoroughly, yes, sir.

Senator EXON. My last question, a very general question, but I think it is a very important question, is regarding the long series of questions that we have today, and the question is this: to your knowledge are you currently the subject of any ongoing investigations by the NRC or any other investigative body?

Mr. STELLO. I learned a long time ago that the answer to that question is always not that I am aware of, but that does not mean there are not any. I really do not know. None that I know that I am personally being investigated, and I would hope that if that were an issue, it would be covered in the FBI background investigation of me, which I have not seen. I would assume that if there is any such investigation, it would be identified there, and I am not aware of any.

Senator EXON. Thank you very much, Mr. Stello. We are adjourned until 2 p.m. tomorrow afternoon.

[Additional information supplemented by Mr. Stello follows:]

Department of Energy
Washington, DC 20585

November 16, 1989

The Honorable Sam Nunn
Chairman, Committee on Armed Services
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

During the hearing on November 15, 1989, Senator Wirth raised questions about how the judgments made by me and my past performance can give Congress the assurance that I can indeed perform well in the job of Assistant Secretary of Energy for Defense Programs. You have already been provided with some information that speaks to this question but after further reflection, I believe this should be supplemented. Accordingly, I believe there is very important information that has not been made available to the Committee that deals directly with this question. That information constitutes the formal Government Senior Executive Service Performance Appraisal System. These appraisals are consistently used to make decisions regarding advancements, pay level increases, and bonuses. This system is directed toward answering such questions. I have, therefore, concluded that it may be very useful to the Committee to have copies of all of my appraisals for the past nine years. This time interval was selected since during this time, I was in a position which required an initial Commission approval vote and continuing Commission confidence in my abilities. Copies are enclosed.

I hope you will find that this information will give you the confidence regarding my ability over the past many years to perform this task.

Sincerely,

Victor Stello, Jr.
Nominee for Assistant Secretary
of Energy for Defense Programs

Enclosure:
As Stated

cc: John W. Warner
Ranking Minority Member

NRC Form 368
(9 86)
NRCM - 51
and 41

U.S. NUCLEAR REGULATORY COMMISSION

NOMINATION AND AUTHORIZATION FOR CASH AWARD

DATE OF NOMINATION

INSTRUCTIONS Prepare two signed copies. Include a citation of 100 words or less on the reverse

1. CASH AWARD NOMINEES

A. EMPLOYEE'S *(Payroll)* NAME	B. POSITION TITLE	C. ORGANIZATION	D. GRADE	E. BASIC ANNUAL SALARY
STELLO, Victor, Jr.	Executive Director for Operations	EDO	ES-6	$80,700

2. KIND OF CONTRIBUTION
☐ SUGGESTION *(Attach copy)*
☐ INVENTION
☒ SPECIAL ACT OR SERVICE } (NRCM 4154 APPLIES) *Complete 3A, 3B, 4 and 6 below*
☐ PERFORMANCE AWARD (NRCM 4151 APPLIES) *Complete 5 and 6 below*

3A. BENEFITS FROM SUGGESTIONS OR SPECIAL ACTS (Only)

a. INTANGIBLE	1) VALUE	☐	MODERATE	☐	SUBSTANTIAL	☐	HIGH	☒ EXCEPTIONAL
	2) APPLICATION	☐	LIMITED	☐	EXTENDED	☐	BROAD	☒ GENERAL

		FORMER METHOD	IMPROVED METHOD	SAVINGS
b. TANGIBLE *(Show cost figures on an annual basis)*	LABOR COST	$	$	$
	MATERIALS COST	$	$	$
	TOTAL	$	$	$

3B. RECOMMENDED AMOUNT OF CASH AWARD (Provide itemized list of individual amounts making group total on the reverse.)

	TANGIBLE BENEFITS	INTANGIBLE BENEFITS	TOTAL
A. INDIVIDUAL	$	$ 10,000	$10,000
B. GROUP	$	$	$

4. JUSTIFICATION OR EVALUATION *(Suggestions or Special Acts – Narrative statement to support the information in 3A and B above. Give dates of job performance or achievement. For tangible benefits, give detailed computations to justify figures shown. Continue on reverse if necessary.)*

See attached statement

5. PERFORMANCE AWARD

Attach performance appraisal. If the appraisal is more than 60 days old, a written justification MUST accompany the appraisal *(may be provided on the reverse)*. Performance awards are based primarily on performance as evidenced by the performance appraisal. The following table contains the range of percentages to be used.

PERFORMANCE APPRAISAL SUMMARY RATING		AMOUNT OF AWARD
☐	Outstanding	Up to 15% of base pay
☐	Excellent	Up to 10% of base pay

To determine the percentage of base salary to be used, consider the difficulty of the job, caliber of performance plan, recent promotions and relative cash values of award compared with other monetary recognition. Lower percentages of base salary would be appropriate in most instances.

RECOMMENDED PERCENTAGE OF BASE PAY ________ % X BASE PAY

AMOUNT OF CASH AWARD $

The availability of awards is subject to funding constraints.

6. RECOMMENDATION AND CERTIFICATION

a. SIGNATURE – SUBMITTING OFFICIAL *(Recommending Supervisor, Recommending Peer, or Suggestion Evaluator)*
Lando W. Zech, Jr.
Lando W. Zech, Jr., Chairman
DATE 6-8-89

b. I approve the recommended cash award subject to the certifications in c and d below.
SIGNATURE – APPROVING OFFICIAL *(Office Director/Regional Administrator/EDO/Chairman. See NRCM 4151 or 4154, as appropriate)*
Lando W. Zech, Jr.
Lando W. Zech, Jr., Chairman
DATE 6-8-89

c. I hereby certify that the above proposal meets the requirements of NRC Manual Chapter 4151 or 4154, as appropriate.
SIGNATURE – CERTIFYING OFFICIAL *(Division of Organization and Personnel)*
DATE

d. I hereby certify that there are sufficient funds available to cover the approved award. I therefore authorize the preparation of a public voucher and payment of cash as recommended in item 3 or 5 above.
SIGNATURE – CERTIFYING OFFICIAL *(Office of Administration, Program Support Branch, Fiscal Section)*
DATE

JUSTIFICATION STATEMENT FOR SECTION 4 - SPECIAL SERVICE AWARD

Victor Stello, Jr. has rendered invaluable service to the Commission and significantly enhanced the effectiveness of the NRC's regulatory program by his determined efforts to improve the operational performance of the nation's nuclear power plants. In response to the Commission's concern about nuclear power plants with below average performance ratings, Vic Stello, in late 1986, on his own initiative, began a series of semi-annual Senior Management Meetings to review the performance of all licensed facilities and to focus the agency's most senior staff members' attention on measures that would upgrade the performance levels of those facilities considered "problem" plants. This innovative management tool has been used to design individual plant-oriented NRC programs of review, analysis, inspection, and enforcement to correct performance deficiencies and improve subsequest performance ratings.

Vic Stello's strong and active leadership of this program has, in 1989, begun to produce lasting dividends for the agency. For the first time this year, I have been able to cite a clear and significant improvement in the key parameters NRC monitors to measure operational safety. For example, compared to 1984, the first year in which such records were maintained, the number of significant operating events has decreased, the unplanned automatic plant shutdown rate has improved, the number of safety systsm actuations has decreased, and the number of precursor events has declined.

This improving record of nuclear power plant performance has directly contributed to improved public perceptions of the effectiveness the NRC in carrying out its mission of protecting public health and safety. In a signed statement to the President issued during the week of May 15, 1989, Senator J. Bennett Johnston observed that "[t]he NRC has come a very long way under Admiral Zech's leadership. The credibility of the agency is, in my opinion, at an all-time high with persons on both sides of the nuclear debate. The Commission has solid accomplishments to its credit." Vic Stello's persistence and determination to enhance nuclear safety through the direct involvement of NRC managers at the highest levels has, perhaps more than any other single NRC action, contributed to the improved industry performance that led to this remarkable statement of support from the Congress.

NRC FORM 381
(6-87)
NRCM 4182

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES) PERFORMANCE PLANNING AND APPRAISAL SUMMARY PAGE

SENIOR EXECUTIVE – TYPED NAME (Last, first, middle initial)

STELLO, Victor, Jr.

INSTRUCTIONS: This page contains the final steps required for the SES performance appraisal process, and is used as the cover for the convenience of the final reviewers. Complete only the upper portion of this page.

STEP	SUMMARY					PAY LEVEL (Check if applicable)		AWARD RECOMMENDED			PLACEMENT (Check if applicable)		SIGNATURE	DATE
	O	E	S	M	U	FROM ES	TO ES	NO	YES	AMOUNT	REASSIGN	REMOVE		
4 AND 6 CONTINUED	X								X				SUPERVISING EXECUTIVE Lando W. Zech, Jr. Lando W. Zech, Jr.	6/5/89
10 CONTINUED													EXECUTIVE REVIEWER (If applicable)	
11													RANKING OFFICIAL	
12													PERFORMANCE REVIEW BOARD*	
13													APPOINTING AUTHORITY (Final decision)	
14													AWARDING AUTHORITY (Final decision)	

RANKING OFFICIAL COMMENT (Optional)

PERFORMANCE REVIEW BOARD COMMENTS (Optional)

* STEP 12, above, the Performance Review Board places an amount under that column, if requested by Awarding Authority.

APPOINTING AUTHORITY COMMENTS (Optional)

AWARDING AUTHORITY COMMENTS (Optional)

PERFORMANCE RATING DEFINITIONS

OUTSTANDING (O)
In all [illegible] and critical elements, job performance consistently exceeded the performance standards to an exceptional degree. For the summary rating, the Senior Executive performed at an overall outstanding level and has been rated outstanding in all critical elements and not less than excellent in all subelements.

EXCELLENT (E)
Job performance frequently exceeded that expected in the performance standards to a noticeable degree. For the summary rating, the Senior Executive performed at an overall excellent level and has been rated at least excellent in all critical elements and not less than fully successful in all subelements.

FULLY SUCCESSFUL (S)
Job performance consistently met that expected in the performance standards. For the summary rating, the Senior Executive performed at an overall fully successful level.

MINIMALLY SATISFACTORY (M)
Job performance occasionally was less than that expected in the performance standards. For the summary rating, the Senior Executive performed either at an overall minimally satisfactory level so that performance can be described as marginal, or has been rated minimally satisfactory in at least one critical element of sufficient importance that it outweighs fully successful or better performance in other critical elements.

UNSATISFACTORY (U)
Job performance was normally below that expected in the performance standards. For the summary rating, the Senior Executive performed at an unsatisfactory level, has been rated unsatisfactory in one or more critical elements, and overall performance must be rated unacceptable.

APPRAISAL SUMMARY: PERFORMANCE RATINGS

EXECUTIVE'S NAME: STELLO, Victor, Jr.

CRITICAL ELEMENTS AND SUBELEMENTS	PERFORMANCE RATING	
	SUBELEMENT	CRITICAL ELEMENT
A. PROGRAM GOALS (Up to 3)		
1. Manage NRC Licensing, Regulatory, Administrative Programs		0
a. Five Year Plan	0	
b. Budget	0	
c. Further Develop 5 Year Plan	0	
B. MANAGEMENT EFFECTIVENESS GOALS		0
a. Planning and Organizing	0	
b. Timeliness of Work	0	
c. Selection and Development of Staff	0	
d. Appraising SES and Non-SES Staff	0	
e. Resource Utilization	0	
f. Equal Employment & Affirmative Action Efforts	0	
C. INDIVIDUAL PERFORMANCE		0
a. Problem Solving	0	
b. Interpersonal Skills Including Communications	0	
c. Flexibility	0	
	SUMMARY RATING	0

SUPERVISING EXECUTIVE'S BRIEF NARRATIVE SUMMARY (from page 4 of Form 351):

Vic is a strong, dynamic leader who faces head on the difficult regulatory issues which confront this agency. He demands the highest quality performance from his subordinates and expects them to achieve results, yet is sensitive to their concerns and carefully evaluates their recommendations prior to taking a proposed course of action. In part, his outstanding performance as Executive Director for Operations is attributable to his willingness to take the initiative in solving agency regulatory problems and his in-depth knowledge and perceptions of the issues and of trends and developments in the regulated industry. He is fully committed to protecting the public health and safety and applies to that task his keen and honest analytical ability and the courage of his convictions. He has been of inestimable assistance to me. I have been most fortunate to have had his technical knowledge and leadership qualities available to me in the critical position of Executive Director for Operations during my tenure as Chairman, U.S. Nuclear Regulatory Commission.

PAGE 1

NRC FORM 381
U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES) PERFORMANCE PLANNING AND APPRAISAL

SENIOR EXECUTIVE – TYPED NAME (Last, first, middle initial): Stello, Victor, Jr.
TITLE: Executive Director for Operations
ORGANIZATION:
DATE: 7/20/88
RATING PERIOD FROM: 07/01/88 TO: 06/30/89
CAREER APPOINTEE: ☒ YES ☐ NO
ES LEVEL: ES-6

SUPERVISING EXECUTIVE – TYPED NAME, TITLE, AND ORGANIZATION:
Lando W. Zech, Jr., Chairman
U.S. Nuclear Regulatory Commission
SIGNATURE: Lando W. Zech Jr
DATE: 7-26-88

STEP 3 – REVIEW/APPROVAL OF PERFORMANCE PLAN (To be completed AFTER STEPS 1 AND 2 below. Mandatory)
REVIEWING OFFICIAL – TYPED NAME, TITLE, AND ORGANIZATION:
SIGNATURE:
DATE:

PLANNING INSTRUCTIONS. At the beginning of the rating period the Senior Executive and Supervising Executive must jointly develop
STEP 1 – CRITICAL ELEMENTS AND SUBELEMENTS; and identify the associated
STEP 2 – PERFORMANCE STANDARDS (EXPECTED RESULTS), allowing space for
STEP 4 – PERFORMANCE APPRAISAL, a narrative justification of rating level, to follow immediately after each PERFORMANCE STANDARD. STEP 4 To be provided by the Supervising Executive at the end of the rating period.
O – OUTSTANDING E – EXCELLENT S – FULLY SUCCESSFUL M – MINIMALLY SATISFACTORY U – UNSATISFACTORY

PROGRAM GOAL(S): At least one is mandatory, up to three are permitted.
1. SPECIFIC PROGRAM GOAL CRITICAL ELEMENT (Number 1, 2 and 3)
PERFORMANCE STANDARD (EXPECTED RESULTS), allow space for PERFORMANCE APPRAISAL to be done at end of rating period.
a. SUBELEMENTS (based on assignments, there may be more than one SUBELEMENT letter sequentially, a, b, c, etc.)
PERFORMANCE STANDARD (EXPECTED RESULT) to follow each SUBELEMENT. ALLOW SPACE for PERFORMANCE APPRAISAL after each STANDARD, to be done at the end of the rating period.

PROGRAM GOAL CRITICAL ELEMENT 1:

Direct and manage the Agency's licensing, regulatory, and administrative programs under the general supervision of the Chairman in accordance with policy directives of the Commission.

Subelement a: Direct the staff effort toward achievement of the goals and objectives of the NRC Five Year Plan.

PERFORMANCE STANDARD:

The goals and objectives of the Five Year Plan are translated into effective staff action. Proper judgment is applied in balancing priorities when conflicts arise. Uses consistent set of tools to evaluate priorities and monitor achievements.

PERFORMANCE APPRAISAL:

PERFORMANCE APPRAISAL				
O	E	S	M	U
X				

Victor Stello has continued to render outstanding service to the Nuclear Regulatory Commission in his management and supervision of this agency's licensing, regulatory, and administrative programs. He adheres consistently to the policy directives of the Commission and is responsive to the general supervision of the Chairman.

Vic Stello has provided outstanding leadership and has performed effectively in directing staff action to develop the Five Year Plan. He has taken a leading role to ensure that the Five Year Plan is responsive to the Commission guidance provided early each fiscal year and is submitted in a timely manner to permit its use as the basis for Commission budget decisions. He has exercised outstanding judgement in carrying out his responsibilities and has established meaningful priorities to support Commission and

Use continuation page, NRC Form 381A, as required. Number pages 1A, 1B.
PERFORMANCE RATING (To be completed for each critical element and subelement)

PAGE 1a

NRC FORM 351A
(5-81)
NRCM 4152

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES)
PERFORMANCE PLANNING AND APPRAISAL
(Continuation)

SENIOR EXECUTIVE TYPED NAME (Last, first, middle initial)

STELLO, Victor, Jr.

PLANNING INSTRUCTIONS: At the beginning of the rating period the Senior Executive and Supervisory Executive must jointly develop:
STEP 1 – CRITICAL ELEMENTS AND SUBELEMENTS, and identify the [illegible]
STEP 2 – PERFORMANCE STANDARDS (EXPECTED RESULTS), allowing space for the Supervisory Executive to provide, at end of rating period,
STEP 4 – PERFORMANCE APPRAISAL, a narrative justification of [illegible] level, to follow immediately after each PERFORMANCE STANDARD
O – OUTSTANDING E – EXCELLENT S – FULLY SATISFACTORY M – MINIMALLY SUCCESSFUL U – UNSATISFACTORY

PERFORMANCE APPRAISAL

O	E	S	M	U

Program Goal Critical Element 1 (Cont'd):

Subelement a (Cont'd):

agency objectives. Major actions taken under his direction during this appraisal period include publication of the fitness for duty rule, completion of the Peach Bottom enforcement actions and the subsequent authorization to restart the facility, submission to the Commission of a proposed maintenance rule, and resolution of the defective and counterfeit fastener issue. He continues to employ effective tools to evaluate both licensee performance and the achievement of agency goals.

PERFORMANCE RATING (To be completed for each critical element and subelement)

PAGE 1b

NRC FORM 391A
[illegible]

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES)
PERFORMANCE PLANNING AND APPRAISAL
(Continuation)

SENIOR EXECUTIVE TYPED NAME [illegible]

STELLO, Victor, Jr.

PLANNING INSTRUCTIONS: [illegible]
STEP 1 – CRITICAL ELEMENTS AND SUBELEMENTS, [illegible]
STEP 2 – PERFORMANCE STANDARDS (EXPECTED RESULTS), [illegible]
STEP 4 – PERFORMANCE APPRAISAL, [illegible] PERFORMANCE STANDARD
O – OUTSTANDING E – EXCELLENT S – FULLY SATISFACTORY M – MINIMALLY SUCCESSFUL U – UNSATISFACTORY

Program Goal Critical Element 1 (Cont'd):

Subelement b: Direct and coordinate implementation of the FY 1989 budget to accommodate agency requirements.

PERFORMANCE STANDARD:

Implementation of the budget provides for efficient and effective utilization of resources. Timely and balanced adjustments are made to reflect changing priorities.

PERFORMANCE APPRAISAL:

Vic Stello has been especially effective in managing the agency's resources to accomplish the Commission's regulatory programs within budget limits established by the Congress. In FY 1989, he has successfully managed resources such that the agency's mission was accomplished despite substantial budget constraints. After the Commission has formulated its guidance on resource matters, Vic Stello has faithfully carried out his responsibilities for coordination and implementation of the Commission's decisions to meet agency regulatory objectives.

PERFORMANCE APPRAISAL

O	E	S	M	U
X				

PERFORMANCE RATING (To be completed for each critical element and subelement)

PAGE 1c

NRC FORM 381A
(5-81)
NRCM 4132

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES)
PERFORMANCE PLANNING AND APPRAISAL
(Continuation)

SENIOR EXECUTIVE TYPED NAME (Last, first, middle initial)
STELLO, Victor, Jr.

PLANNING INSTRUCTIONS: At the beginning of the rating period the Senior Executive and Supervisory Executive must jointly Develop
STEP 1 – CRITICAL ELEMENTS AND SUBELEMENTS, and identify the associated
STEP 2 – PERFORMANCE STANDARDS (EXPECTED RESULTS) allowing space for the Supervising Executive to provide at end of rating period
STEP 3 – PERFORMANCE APPRAISAL, a narrative justification of appraisal level, to follow immediately after each PERFORMANCE STANDARD
O – OUTSTANDING E – EXCELLENT S – FULLY SATISFACTORY M – MINIMALLY SUCCESSFUL U – UNSATISFACTORY

PERFORMANCE APPRAISAL

O	E	S	M	U
X				

Program Goal Critical Element 1 (Cont'd):

Subelement c: Continue development of the NRC Five Year Plan and supporting budgets.

PERFORMANCE STANDARD:

Ensure that the Five Year Plan contains clear and concise statements of staff work in progress and relative priority information, and is submitted in a timely manner to serve as the basis for the Commission to provide specific direction and emphasis to the staff for changing NRC programs and preparing the agency's budget requests to the OMB.

PERFORMANCE APPRAISAL:

Under Vic Stello's outstanding leadership, the Five Year Plan has been effectively used as the basis for monitoring and directing NRC efforts to achieve the objectives which the Commission established in the Plan. In addition, he has been especially diligent in promoting a thorough evaluation of the effectiveness of various agency programs and then making adjustments to the Plan that enhance the agency's ability to carry out its health and safety mission. He continued an initiative that he started last year, leading a seminar in Baltimore where NRC senior executives had an opportunity to focus on the strategic issues facing the agency. By this and other means, he has gained the adherence of the staff to the concept of the Five Year Plan as the central planning document for forecasting agency programs and resources.

PERFORMANCE RATING (To be completed for each critical element and subelement)

PAGE 2

NRC FORM [illegible]

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES)
PERFORMANCE PLANNING AND APPRAISAL

SENIOR EXECUTIVE – TYPED NAME (Last, first, middle initial)

STELLO, Victor, Jr.

[illegible]
STEP 1 – CRITICAL ELEMENTS AND SUBELEMENTS [illegible]
STEP 2 – PERFORMANCE STANDARDS (EXPECTED RESULTS) [illegible]
STEP 4 – PERFORMANCE APPRAISAL [illegible] PERFORMANCE STANDARD
O – OUTSTANDING E – EXCELLENT S – FULLY SUCCESSFUL M – MINIMALLY SATISFACTORY U – UNSATISFACTORY

MANAGEMENT EFFECTIVENESS GOAL (Coverage of SUBELEMENTS a through f mandatory, additional subelements are optional)

a. PLANNING AND ORGANIZING
PERFORMANCE STANDARD (EXPECTED RESULT) ALLOW
SPACE for PERFORMANCE APPRAISAL to be done at end of rating period
b. TIMELINESS OF WORK OR PRODUCT
PERFORMANCE STANDARD (EXPECTED RESULT) ALLOW
SPACE for PERFORMANCE APPRAISAL
c. SELECTION AND DEVELOPMENT OF STAFF
PERFORMANCE STANDARD (EXPECTED RESULT) ALLOW
SPACE for PERFORMANCE APPRAISAL
d. APPRAISING SES AND NON-SES STAFF (INCLUDES ALL PHASES OF THE PERFORMANCE APPRAISAL PROCESS)
Continue in same manner as a, b, and c above
e. RESOURCE UTILIZATION
Continue in same manner as a, b, and c above
f. EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION EFFORTS (Relating to all groups protected by antidiscrimination laws and covering all employment practices)
Continue in same manner as a, b, and c above
g. ADDITIONAL SUBELEMENTS (if appropriate)
Continue in same manner as a, b, and c above.

Management Effectiveness Goal:

Subelement a: Plan and Organizing

PERFORMANCE STANDARD:

Adequately plan for and organize use of resources to ensure that Commission policies and guidance are implemented effectively. Recommend to the Commission appropriate planning and program goals.

PERFORMANCE APPRAISAL:

Vic Stello has been a vigorous leader in the effort to develop more effective means for planning and organizing NRC staff work activities. In the spring of each year, he forwards to the Commission his recommended changes to the planning guidance in the Five Year Plan. He frequently reviews NRC staff performance and, through effective reliance on senior NRC management, ensures that all NRC staff human resources are productively employed in meeting agency goals. He may be relied upon to take the initiative to make adjustments in NRC programs in order to meet changing agency requirements. During this appraisal period, he has reorganized the structure of his immediate office by appointing a second Deputy EDO and assigned specific oversight responsibilities to his two deputies, thereby significantly strengthening top management attention on priority agency activities. He involves himself personally in high priority projects, such as the resolution of the substandard and counterfeit fastener issue and the staff effort to address technical issues raised in intervenor contentions filed in the Seabrook and Shoreham proceedings, and facilitates closure, as appropriate, on projects important to the agency's mission.

PERFORMANCE APPRAISAL

O	E	S	M	U
X				

(Use continuation page, NRC Form [illegible], as required. Number 3A, 3B, 3C, etc.) PERFORMANCE RATING (To be completed for each critical element and subelement)

PAGE 2a

NRC FORM [illegible]1A
NRCM 4152

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES)
PERFORMANCE PLANNING AND APPRAISAL
(Continuation)

SENIOR EXECUTIVE TYPED NAME [illegible]
STELLO, Victor, Jr.

PLANNING INSTRUCTIONS [illegible]
STEP 1 – CRITICAL ELEMENTS AND SUBELEMENTS [illegible]
STEP 2 – PERFORMANCE STANDARDS (EXPECTED RESULTS) [illegible]
STEP 4 – PERFORMANCE APPRAISAL [illegible] PERFORMANCE STANDARD
O - OUTSTANDING E - EXCELLENT S - FULLY SATISFACTORY M - MINIMALLY SUCCESSFUL U - UNSATISFACTORY

Management Effectiveness Goal (Cont'd):

Subelement b: Timeliness and Quality of Work or Product

PERFORMANCE STANDARD:

Work should be implemented in a sufficiently timely manner to achieve objectives. Meet Commission-established deadlines. When deadlines cannot be met with due regard to quality of work, prompt notice should be given to the Commission in order to allow adjustments.

PERFORMANCE APPRAISAL:

Vic Stello has been effective in assuring that the staff meets deadlines and achieves agency objectives in a timely manner. He regularly monitors the progress of NRC programs and their management in order to assure that agency work is completed on time and presented to the Commission for action. Work products are submitted in accordance with Commission established deadlines and are of high quality to facilitate Commission decisionmaking. During this appraisal period, he has been particularly effective in ensuring that action items of particular importance to the Chairman have been submitted in time to permit Commission consideration prior to the expiration of the Chairman's term of office. Examples include the maintenance rule, fitness for duty rule, and a progress report on the Status of NUREG 1150. He has also ensured that timely Commission licensing action has been taken on the Pilgrim and Peach Bottom restarts and on the South Texas, Seabrook and Shoreham low and full power licenses. When unavoidable schedule changes occur, he promptly notifies the Chairman and Commission and seeks their guidance as needed.

PERFORMANCE APPRAISAL				
O	E	S	M	U
X				

PERFORMANCE RATING (To be completed for each critical element and subelement)

PAGE 2b

NRC FORM 201A
U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES)
PERFORMANCE PLANNING AND APPRAISAL
(Continuation)

SENIOR EXECUTIVE TYPED NAME (Last, first, middle initial)
STELLO, Victor, Jr.

PLANNING INSTRUCTIONS: [illegible]
STEP 1 – CRITICAL ELEMENTS AND SUBELEMENTS, [illegible]
STEP 2 – PERFORMANCE STANDARDS (EXPECTED RESULTS) [illegible]
STEP 4 – PERFORMANCE APPRAISAL [illegible] PERFORMANCE STANDARD
O – OUTSTANDING E – EXCELLENT S – FULLY SATISFACTORY M – MINIMALLY SUCCESSFUL U – UNSATISFACTORY

Management Effectiveness Goal (Cont'd):

Subelement c: Selection and Development of Staff

PERFORMANCE STANDARD:

Develop and implement enhanced programs for staff development; ensure effective integration of organizational planning with career development initiatives and succession planning.

PERFORMANCE APPRAISAL:

Vic Stello has shown leadership as an involved senior manager. He is sensitive to both the short and long term management needs of the NRC. In this connection, under his leadership, agency staff development is being appropriately emphasized and leadership development planning is being initiated. Rotational assignments both within the headquarters organization and between the NRC field offices and the NRC headquarters operations are being encouraged to ensure effective agency management across the breadth of agency programs.

PERFORMANCE APPRAISAL				
O	E	S	M	U
X				

PERFORMANCE RATING (To be completed for each critical element and subelement)

PAGE 2c

NRC FORM 351A
[illegible]
NRCM 4152

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES)
PERFORMANCE PLANNING AND APPRAISAL
(Continuation)

SENIOR EXECUTIVE TYPED NAME (Last, first, middle initial)
STELLO, Victor, Jr.

PLANNING INSTRUCTIONS: At the beginning of the rating period the Senior Executive and Supervisory Executive must jointly develop
STEP 1 – CRITICAL ELEMENTS AND SUBELEMENTS, and identify the [illegible]
STEP 2 – PERFORMANCE STANDARDS (EXPECTED RESULTS) [illegible]
STEP 4 – PERFORMANCE APPRAISAL [illegible] PERFORMANCE STANDARD
O – OUTSTANDING E – EXCELLENT S – FULLY SATISFACTORY M – MINIMALLY SUCCESSFUL U – UNSATISFACTORY

Management Effectiveness Goal (Cont'd):

Subelement d: Appraising SES and Non-SES Staff, including all phases of the performance appraisal process.

PERFORMANCE STANDARD:

Performance plans are issued in a timely fashion. Appraisal and reviews are conducted in a fair and objective manner. The conduct of performance appraisal functions is generally in accordance with agency procedures time tables.

PERFORMANCE APPRAISAL:

Vic Stello is particularly diligent in appraising those Senior Executive Service personnel who report to him. Moreover, he ensures that other senior NRC managers fully meet their responsibilities to appraise those personnel within their organizations. He is known for the timely, fair, and objective manner in which he performs his appraisal functions for both SES and non-SES personnel.

PERFORMANCE APPRAISAL				
O	E	S	M	U
X				

PERFORMANCE RATING (To be completed for each critical element and subelement)

NRC FORM 301A
U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES)
PERFORMANCE PLANNING AND APPRAISAL
(Continuation)

SENIOR EXECUTIVE TYPED NAME (Last, first, middle initial)
STELLO, Victor, Jr.

PLANNING INSTRUCTIONS [illegible]
STEP 1 – CRITICAL ELEMENTS AND SUBELEMENTS [illegible]
STEP 2 – PERFORMANCE STANDARDS (EXPECTED RESULTS) [illegible]
STEP 3 – PERFORMANCE APPRAISAL [illegible] PERFORMANCE STANDARD
O – OUTSTANDING E – EXCELLENT S – FULLY SATISFACTORY M – MINIMALLY SUCCESSFUL U – UNSATISFACTORY

Management Effectiveness Goal (Cont'd):

Subelement e: Resource Utilization

PERFORMANCE STANDARD:

Ensure that personnel and budgetary allocations are efficiently tailored to the changing needs of the agency.

PERFORMANCE APPRAISAL:

Vic Stello has fully considered and effectively reflects in his resource allocation decisions both the agency mission and priorities. He brings schedule and resource problems to the attention of the Commission and recommends alternative courses of action that support the Five Year Plan and the agency mission. His performance in resource utilization is judged to be outstanding.

PERFORMANCE APPRAISAL				
O	E	S	M	U
X				

PERFORMANCE RATING [illegible]

PAGE 2e

NRC FORM 351A
U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES)
PERFORMANCE PLANNING AND APPRAISAL
(Continuation)

SENIOR EXECUTIVE TYPED NAME (Last, first, middle initial)
STELLO, Victor, Jr.

PLANNING INSTRUCTIONS [illegible]
STEP 1 - CRITICAL ELEMENTS AND SUBELEMENTS [illegible]
STEP 2 - PERFORMANCE STANDARDS (EXPECTED RESULTS) [illegible]
STEP 4 - PERFORMANCE APPRAISAL [illegible] PERFORMANCE STANDARD
O - OUTSTANDING E - EXCELLENT S - FULLY SATISFACTORY M - MINIMALLY SUCCESSFUL U - UNSATISFACTORY

Management Effectiveness Goal (Cont'd):

Subelement f: Equal Employment and Affirmative Action Efforts

PERFORMANCE STANDARD:

Identify problems in meeting EEO goals specified in Commission-approved EEO plan and take appropriate action to eliminate problems.

PERFORMANCE APPRAISAL:

The agency continued its strong efforts to improve in its EEO plan performance. EEO problems have been resolved in a professional and timely manner and new initiatives, such as the dual track approach to employee advancement and the upward bound program, in which agency positions would be evaluated to determine whether non-degreed employees might perform the required functions, are being explored for their impact on agency programs and their practicality as a means of employee development. Vic Stello has been especially effective in sensitizing the agency's managers and staff to the goals of the EEO program. His leadership has resulted in successes in an agency whose positions are highly technical in nature and where opportunities to improve through recruitment of new personnel have been few due to FTE and resource limitations.

PERFORMANCE APPRAISAL				
O	E	S	M	U
X				

PERFORMANCE RATING (To be completed for each critical element and subelement)

NRC FORM 361 [illegible]

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES)
PERFORMANCE PLANNING AND APPRAISAL

SENIOR EXECUTIVE – TYPED NAME (Last, first, middle initial)

STELLO, Victor, Jr.

[illegible]
STEP 1 – CRITICAL ELEMENTS AND SUBELEMENTS, [illegible]
STEP 2 – PERFORMANCE STANDARDS (EXPECTED RESULTS), [illegible]
STEP 4 – PERFORMANCE APPRAISAL, [illegible] PERFORMANCE STANDARD.
O – OUTSTANDING E – EXCELLENT S – FULLY SUCCESSFUL M – MINIMALLY SATISFACTORY U – UNSATISFACTORY

INDIVIDUAL PERFORMANCE (Coverage of SUBELEMENTS a and b is mandatory, additional SUBELEMENTS are optional)
a. PROBLEM SOLVING
PERFORMANCE STANDARD (EXPECTED RESULT) ALLOW
SPACE for PERFORMANCE APPRAISAL to be done at the end of the rating period
b. INTERPERSONAL SKILLS, INCLUDING COMMUNICATIONS
PERFORMANCE STANDARD (EXPECTED RESULT) ALLOW
SPACE for PERFORMANCE APPRAISAL to be done at the end of the rating period
c. ADDITIONAL SUBELEMENTS (if appropriate)
Continue in same manner as a and b above.

Individual Performance:

Subelement a: Problem Solving

PERFORMANCE STANDARD:

Give personal attention to problems where solutions involve interoffice or interagency cooperation.

PERFORMANCE APPRAISAL:

Vic Stello is particularly noted for his ability to solve complex and difficult agency problems. In part, this is because he is an involved, "hands on" manager, who keeps himself fully and currently informed on emerging regulatory problems in need of action by the NRC. When problems emerge, such as the defective and counterfeit fastener issue and issues associated with the management of the Rancho Seco plant, he personally takes the issues on and brings together management teams as needed to effect expeditious resolution. His managerial style is marked by professionalism and a thoughtful, analytical approach. Most importantly, Vic Stello has the courage of his convictions and, as needed, will defend his proposals before the Commission, the Congress and the American people.

PERFORMANCE APPRAISAL				
O	E	S	M	U
X				

(Use continuation page, NRC Form 361A, as required. Number pages 3A, 3B, 3C, etc.) PERFORMANCE RATING (To be completed for each critical element and subelement)

NRC FORM 351A
(5-81)
NRCM 4152

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES)
PERFORMANCE PLANNING AND APPRAISAL
(Continuation)

SENIOR EXECUTIVE TYPED NAME (Last, first, middle initial)
STELLO, Victor, Jr.

PLANNING INSTRUCTIONS: [illegible]
STEP 1 – CRITICAL ELEMENTS AND SUBELEMENTS, [illegible]
STEP 3 – PERFORMANCE STANDARDS (EXPECTED RESULTS) [illegible]
STEP 4 – PERFORMANCE APPRAISAL [illegible] PERFORMANCE STANDARD
O – OUTSTANDING E – EXCELLENT S – FULLY SATISFACTORY M – MINIMALLY SUCCESSFUL U – UNSATISFACTORY

PERFORMANCE APPRAISAL

O	E	S	M	U
X				

Individual Performance (Cont'd):

Subelement b: Interpersonal Skills Including Communications

PERFORMANCE STANDARD:

Communicate clearly, both in writing and orally. Interpersonal relationships with office directors should provide strong management leadership. Maintain open door policy with staff for counsel, discussion, or hearing.

PERFORMANCE APPRAISAL:

Vic Stello is a particularly outstanding manager of the NRC staff. He excels in fostering interpersonal relationships among senior managers and provides dynamic and forceful leadership for all phases of the regulatory program. He has consistently supported the concept of bringing agency managers together as a team. He is also a strong advocate of the Commission's Open Door and Differing Professional Opinion policies. He is an exceptional motivator of human resources to meet agency objectives. Personal leadership - leadership by example - is Vic Stello's strong point.

PERFORMANCE RATING (To be completed for each critical element and subelements)

NRC FORM 351A U.S. NUCLEAR REGULATORY COMMISSION
[illegible]
NRCM 4152

SENIOR EXECUTIVE SERVICE (SES)
PERFORMANCE PLANNING AND APPRAISAL
(Continuation)

SENIOR EXECUTIVE TYPED NAME (Last, first, middle initial)
STELLO, Victor, Jr.

PLANNING INSTRUCTIONS: At the beginning of the rating period the Senior Executive and Supervisory Executive must jointly develop:
STEP 1 - CRITICAL ELEMENTS AND SUBELEMENTS, and identify the critical[illegible]
STEP 2 - PERFORMANCE STANDARDS (EXPECTED RESULTS), allowing space for the Supervisory Executive to provide, at end of rating period
STEP 4 - PERFORMANCE APPRAISAL, a narrative justification of appraisal level, to follow immediately after each PERFORMANCE STANDARD
O - OUTSTANDING E - EXCELLENT S - FULLY SATISFACTORY M - MINIMALLY SUCCESSFUL U - UNSATISFACTORY

PERFORMANCE APPRAISAL

Individual Performance:

Subelement c: Initiative

PERFORMANCE STANDARD:

Recognize major policy questions requiring Commission decision and initiate action to bring these to Commission attention. Use initiative to develop solutions to problems before they become critical.

PERFORMANCE APPRAISAL:

Vic Stello is an outstanding NRC manager in taking the initiative to recognize emerging major policy issues which may require agency action. He consistently acts promptly to develop solutions to regulatory problems before they become critical and adversely impact the agency's statutory mission to protect the public health and safety. He is aoept at recognizing policy implications of proposed actions, and frequently consults with the Chairman and the Commission, making solid recommendations as to the appropriate course of action for resolving significant agency problems. During this appraisal period, he alerted the Chairman and Commission to problems in the management of the Rancho Seco plant and to industry reactions to such pending action items as the maintenance and standardization rules.

O	E	S	M	U
X				

PERFORMANCE RATING (To be completed for each critical element and subelement)

NRC FORM 251
(6-81)
NRCM 4102

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES)
PERFORMANCE PLANNING AND APPRAISAL

SENIOR EXECUTIVE – TYPED NAME *(Last, first, middle initial)*

STELLO, Victor, Jr.

SUPERVISING EXECUTIVE: At the beginning of the rating period, STEPS 1, 2 and 3 are completed. At the end of the rating period complete STEP 4.

STEP 4 -- PERFORMANCE APPRAISAL/EVALUATION *(Continued)*. **SUPERVISING EXECUTIVE:** Place Summary rating *(Mandatory)*, any recommended pay level change, reassignment or removal action in STEP 4 AND 6 CONTINUED, on the Summary Page, after STEP 6, sign and date.

SUPERVISING EXECUTIVE's COMMENTS *(Brief narrative summary) May document areas for future emphasis or training and development needs. Begin performance planning for the next rating period, using a new NRC Form 251.*

Vic is a strong, dynamic leader who faces head on the difficult regulatory issues which confront this agency. He demands the highest quality performance from his subordinates and expects them to achieve results, yet is sensitive to their concerns and carefully evaluates their recommendations prior to taking a proposed course of action. In part, his outstanding performance as Executive Director for Operations is attributable to his willingness to take the initiative in solving agency regulatory problems and his in-depth knowledge and perceptions of the issues and of trends and developments in the regulated industry. He is fully committed to protecting the public health and safety and applies to that task his keen and honest analytical ability and the courage of his convictions. He has been of inestimable assistance to me. I have been most fortunate to have had his technical knowledge and leadership qualities available to me in the critical position of Executive Director for Operations during my tenure as Chairman, U.S. Nuclear Regulatory Commission.

STEP 4A – If Reviewing Official used in office, forward to that official (STEP 5). **STEP 4B** -- If Reviewing Official not used, proceed to STEP 6.

STEP 5 – REVIEWING OFFICIAL *(Optional by Official Reviewer cannot change appraisal or rating.* Indicate only if review has been made. Complete and return within three workdays. ☐ YES

STEP 6 – SUPERVISING EXECUTIVE: Discuss appraisal with Senior Executive. Sign and date **STEP 4 AND 6 CONTINUED** on the Summary Page. Note: If there is another supervisory level between Supervising Executive and Ranking Official, send an information copy to that official.

STEP 7 – SENIOR EXECUTIVE: I have reviewed and discussed my performance appraisal with my supervisor. My signature does not imply that I agree with the appraisal or rating. *(Complete this step and return this appraisal to your supervisor within five workdays.)*

INDEPENDENT REVIEW
☐ REQUESTED ☑ NOT REQUESTED

SENIOR EXECUTIVE'S SIGNATURE *(Mandatory)* Victor Stello, Jr.

DATE 6/7/89

SENIOR EXECUTIVE'S COMMENTS *(Optional. Use additional page if necessary)*

STEP 8 – SUPERVISING EXECUTIVE On receipt of appraisal, supply one copy to the Senior Executive and

STEP 8A – If an Independent Review is requested, send the appraisal to the Performance Review Board
STEP 8B – If an Independent Review is not requested, send the original of the appraisal to the Ranking Official

STEP 9 – PERFORMANCE REVIEW BOARD Appoint an Independent Executive Reviewer, if requested by the Senior Executive, within two workdays. *(Mandatory, if requested. Insert name, position title and organization below.)*

INDEPENDENT EXECUTIVE APPOINTED	POSITION TITLE	ORGANIZATION

STEP 10 – INDEPENDENT EXECUTIVE REVIEWER: Conduct review within five workdays of assignment *(Mandatory)*. Indicate below whether you agree or disagree with the supervisor's recommended rating and why *(Use additional pages if necessary)*. Place recommended summary rating, any recommended pay level change, reassignment or removal action in **STEP 10 CONTINUED**, on the Summary Page.

NRC FORM 381
(6-87)
NRCM 4152

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES) PERFORMANCE PLANNING AND APPRAISAL SUMMARY PAGE

SENIOR EXECUTIVE - TYPED NAME (Last, first, middle initial)
STELLO, Victor, Jr.

INSTRUCTIONS: This page contains the final steps required for the SES performance appraisal process, and is used as the cover for the convenience of the final reviewers. Complete only the upper portion of this page.

STEP	SUMMARY					PAY LEVEL (Check if applicable)		AWARD RECOMMENDED			PLACEMENT (Check if applicable)		SIGNATURE	DATE
	O	E	S	M	U	FROM ES	TO ES	NO	YES	AMOUNT	REASSIGN	REMOVE		
4 AND 5 CONTINUED	X												SUPERVISING EXECUTIVE Lando W. Zech Jr. Lando W. Zech, Jr.	7/18/88
10 CONTINUED													EXECUTIVE REVIEWER (If applicable)	
11									X				RANKING OFFICIAL Lando W. Zech Jr	7-26-88
12	X							NA		*			PERFORMANCE REVIEW BOARD* Hugh L Thompson Jr	SEP 08 1988
13	X												APPOINTING AUTHORITY (Final decision) Lando W. Zech Jr.	—
14								NA		*			AWARDING AUTHORITY (Final decision)	12-13-88

RANKING OFFICIAL COMMENT (Optional)

PERFORMANCE REVIEW BOARD COMMENTS (Optional) * STEP 12 above: the Performance Review Board places an amount under that column if requested by Awarding Authority.

* Distinguished Rank Award approved by the President.

H. Thompson
P. Bird
J. Fouchard
C. Heltemes
J. Hoyle
W. Kerr

W. McDonald
F. Miraglia
J. Montgomery
W. Parler
W. Russell
B. Sheron

APPOINTING AUTHORITY COMMENTS (Optional)

AWARDING AUTHORITY COMMENTS (Optional)

* Distinguished Rank Award approved by President.

PERFORMANCE RATING DEFINITIONS

OUTSTANDING (O)
For subelements and critical elements, job performance consistently exceeded the performance standards to an exceptional degree. For the summary rating, the Senior Executive performed at an overall outstanding level and has been rated outstanding in all critical elements and not less than excellent in all subelements.

EXCELLENT (E)
Job performance frequently exceeded that expected in the performance standards to a noticeable degree. For the summary rating, the Senior Executive performed at an overall excellent level and has been rated at least excellent in all critical elements and not less than fully successful in all subelements.

FULLY SUCCESSFUL (S)
Job performance consistently met that expected in the performance standards. For the summary rating, the Senior Executive performed at an overall fully successful level.

MINIMALLY SATISFACTORY (M)
Job performance occasionally was less than that expected in the performance standards. For the summary rating, the Senior Executive performed either at an overall minimally satisfactory level so that performance can be described as marginal, or has been rated minimally satisfactory in at least one critical element of sufficient importance that it outweighs fully successful or better performance in other critical elements.

UNSATISFACTORY (U)
Job performance was normally below that expected in the performance standards. For the summary rating, the Senior Executive performed at an unsatisfactory level, has been rated unsatisfactory in one or more critical elements, and overall performance must be rated unacceptable.

APPRAISAL SUMMARY: PERFORMANCE RATING

EXECUTIVE'S NAME: STELLO, Victor, Jr.

CRITICAL ELEMENTS AND SUBELEMENTS	PERFORMANCE RATING	
	SUBELEMENT	CRITICAL ELEMENT
A. PROGRAM GOALS (Up to 3)		
1. Manage NRC Licensing, Regulatory, Administrative Programs		0
a. Five Year Plan	0	
b. Budget	0	
c. Further Develop 5 Year Plan	0	
B. MANAGEMENT EFFECTIVENESS GOALS		0
a. Planning and Organizing	0	
b. Timeliness of Work	0	
c. Selection and Development of Staff	0	
d. Appraising SES and Non-SES Staff	0	
e. Resource Utilization	0	
f. Equal Employment & Affirmative Action Efforts	0	
C. INDIVIDUAL PERFORMANCE		0
a. Problem Solving	0	
b. Interpersonal Skills Including Communications	0	
c. Initiative	0	
SUMMARY RATING		0

SUPERVISING EXECUTIVE'S BRIEF NARRATIVE SUMMARY (from page 4 of Form 351):

Vic is an outstanding and dynamic leader. He is willing to take on the tough regulatory issues which face this agency, both on a day-to-day basis and over the longer term and does so in a thoughtful, intelligent manner. In part, his outstanding performance as Executive Director for Operations is attributable to his willingness to take the initiative in solving agency regulatory problems. He is fully committed to public health and safety. Many of the issues facing the NRC are surrounded by substantial controversy. A large measure of Vic's outstanding performance is due to the fact that he is a man of keen and honest analytical ability, but also one who has the courage of his convictions. He is truly one of the best of the best public servants in the U.S. government!

PAGE 1

NRC FORM 311
(6-87)
NRCM 4152

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES) PERFORMANCE PLANNING AND APPRAISAL

SENIOR EXECUTIVE - TYPED NAME (Last, first, middle initial): STELLO, Victor, Jr.
TITLE: Executive Director for Operations
ORGANIZATION:
SIGNATURE: Vic Stello Jr.
DATE: 7/14/87
RATING PERIOD FROM: 7/1/87 TO: 6/30/88
CAREER APPOINTEE: ☑ YES ☐ NO
ES LEVEL: ES - 6

SUPERVISING EXECUTIVE - TYPED NAME, TITLE, AND ORGANIZATION:
Lando W. Zech, Jr., Chairman
U.S. Nuclear Regulatory Commission
SIGNATURE: Lando W. Zech Jr.
DATE: 7-15-87

STEP 3 - REVIEW/APPROVAL OF PERFORMANCE PLAN (To be completed AFTER STEPS 1 AND 2 below. Mandatory)

REVIEWING OFFICIAL - TYPED NAME, TITLE, AND ORGANIZATION:
SIGNATURE:
DATE:

PLANNING INSTRUCTIONS. At the beginning of the rating period the Senior Executive and Supervising Executive must jointly develop:
STEP 1 - CRITICAL ELEMENTS AND SUBELEMENTS; and identify the associated
STEP 2 - PERFORMANCE STANDARDS (EXPECTED RESULTS), allowing space for
STEP 4 - PERFORMANCE APPRAISAL, a narrative justification of rating level, to follow immediately after each PERFORMANCE STANDARD. STEP 4 To be provided by the Supervising Executive at the end of the rating period.
O - OUTSTANDING E - EXCELLENT S - FULLY SUCCESSFUL M - MINIMALLY SATISFACTORY U - UNSATISFACTORY

PERFORMANCE APPRAISAL

PROGRAM GOAL(S) At least one is mandatory, up to three are permitted.
1. SPECIFIC PROGRAM GOAL CRITICAL ELEMENT (Number 1, 2 and 3)
PERFORMANCE STANDARD (EXPECTED RESULTS), allow space for PERFORMANCE APPRAISAL to be done at end of rating period
a. SUBELEMENTS (based on assignments, there may be more than one SUBELEMENT letter sequentially, a, b, c, etc.)
PERFORMANCE STANDARD (EXPECTED RESULT) to follow each SUBELEMENT. ALLOW SPACE for PERFORMANCE APPRAISAL, after each STANDARD, to be done at the end of the rating period

PROGRAM GOAL CRITICAL ELEMENT:

Direct and manage the Agency's licensing, regulatory, and administrative programs under the general supervision of the Chairman in accordance with policy directives of the Commission.

Subelement a:

Direct the staff effort toward achievement of the goals and objectives of the Commission PPG and NRC Five Year Plan.

PERFORMANCE STANDARD:

The aims of the PPG and Five Year Plan are translated into effective staff action. Proper judgment is applied in balancing priorities when conflicts arise. Uses consistent set of tools to evaluate priorities and monitor achievements.

PERFORMANCE APPRAISAL:

Victor Stello has rendered outstanding service to the Nuclear Regulatory Commission in his management and supervision of this agency's licensing, regulatory, and administrative programs. He adheres consistently to the policy directives of the Commission. In addition, Vic Stello is responsive to the general supervision of the Chairman.

O	E	S	M	U
X				

Vic Stello has provided outstanding leadership and has performed effectively in directing staff action to effect guidance in the Five Year Plan which incorporates Commission guidance. He has exercised outstanding judgement in carrying out his responsibilities for licensing, regulatory, and administrative programs. In addition, he establishes meaningful priorities to support Commission and agency objectives. He uses consistent tools to evaluate licensee performance and to evaluate agency goals.

(Use continuation page, NRC Form 311A, as required. Number pages 1A, 1B, 1C, etc.)

PERFORMANCE RATING (To be completed for each critical element and subelements)

PAGE 1 a

NRC FORM 351A
(9-81)
NRCM 4152

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES)
PERFORMANCE PLANNING AND APPRAISAL
(Continuation)

SENIOR EXECUTIVE TYPED NAME (Last, first, middle initial)

STELLO, Victor, Jr.

PLANNING INSTRUCTIONS: [illegible]
STEP 1 - CRITICAL ELEMENTS AND SUBELEMENTS, [illegible]
STEP 2 - PERFORMANCE STANDARDS (EXPECTED RESULTS) [illegible]
STEP 4 - PERFORMANCE APPRAISAL [illegible] PERFORMANCE STANDARD
O - OUTSTANDING E - EXCELLENT S - FULLY SATISFACTORY M - MINIMALLY SUCCESSFUL U - UNSATISFACTORY

PERFORMANCE APPRAISAL

O	E	S	M	U
X				

SUBELEMENT b:

Direct and coordinate implementation of the FY 1988 budget to accommodate agency requirements.

PERFORMANCE STANDARD:

Implementation of the budget provides for efficient effective utilization of resources. Timely and balanced adjustments are made to reflect changing priorities.

PERFORMANCE APPRAISAL:

Vic Stello has been especially effective in managing the agency's resources to accomplish the Commission's regulatory programs within budget limits established by the Congress. In FY 1988, he has successfully accomplished the agency mission in the face of substantial budget constraints. When, as in this fiscal year, reprogramming has been required, he has identified necessary adjustments in clear, concise proposals submitted on a timely basis for Commission action. After the Commission has formulated its guidance on resource matters, Vic Stello has faithfully carried out his responsibilities for coordination and implementation of the Commission's decisions to meet agency regulatory objectives.

PERFORMANCE RATING (To be completed for each critical element and subelement)

PAGE 1b

NRC FORM 351A
(6-80)
NRCM 4152

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES)
PERFORMANCE PLANNING AND APPRAISAL
(Continuation)

SENIOR EXECUTIVE TYPED NAME (Last, first, middle initial)
STELLO, Victor, Jr.

PLANNING INSTRUCTIONS: At the beginning of the rating period the Senior Executive and Supervisory Executive must jointly develop: [illegible]
STEP 1 – CRITICAL ELEMENTS AND SUBELEMENTS, and identify the [illegible]
STEP 2 – PERFORMANCE STANDARDS (EXPECTED RESULTS) [illegible]
STEP 4 – PERFORMANCE APPRAISAL, [illegible] PERFORMANCE STANDARD
O – OUTSTANDING E – EXCELLENT S – FULLY SATISFACTORY M – MINIMALLY SUCCESSFUL U – UNSATISFACTORY

SUBELEMENT c.

Continue development of the NRC Five Year Plan and supporting budgets.

PERFORMANCE STANDARD:

The NRC Five Year Plan provides a proactive plan for agency programs and provides an adequate basis for the Commission to provide, in the Spring of 1988, specific direction and emphasis to the staff for changing NRC programs and preparing the agency's FY 1990 budget request to the OMB.

PERFORMANCE APPRAISAL:

Under Vic Stello's outstanding leadership, the Five Year Plan has been effectively used as the basis for monitoring and directing NRC efforts to achieve the objectives which the Commission established in the Plan. In addition, he has been especially diligent in use of the Five Year Plan for evaluating the effectiveness of the various agency programs, making adjustments where warranted to fulfill the agency's health and safety mission. He led the effort to explain the agency's Five Year Plan to all NRC senior executives in three separate seminars in Baltimore last fall. By this and other means, he has gained the adherence of the staff to the concept of the Five Year Plan as the central planning document for forecasting agency programs, resources, and performance.

PERFORMANCE APPRAISAL

O	E	S	M	U
X				

PERFORMANCE RATING (To be completed for each critical element and subelement)

PAGE 2

NRC FORM 351
(6-87)
NRCM 4162

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES)
PERFORMANCE PLANNING AND APPRAISAL

SENIOR EXECUTIVE – TYPED NAME (Last, first, middle initial)

STELLO, Victor, Jr.

PLANNING INSTRUCTIONS: At the beginning of the rating period the Senior Executive and Supervising Executive must jointly develop:
STEP 1 – CRITICAL ELEMENTS AND SUBELEMENTS, and identify the appraiser
STEP 2 – PERFORMANCE STANDARDS (EXPECTED RESULTS), allowing space for
STEP 4 – PERFORMANCE APPRAISAL, a narrative justification of rating level, to follow immediately after each PERFORMANCE STANDARD
O – OUTSTANDING   E – EXCELLENT   S – FULLY SUCCESSFUL   M – MINIMALLY SATISFACTORY   U – UNSATISFACTORY

MANAGEMENT EFFECTIVENESS GOAL *(Coverage of SUBELEMENTS a through f mandatory, addition of subelements are optional)*
a. PLANNING AND ORGANIZING
PERFORMANCE STANDARD (EXPECTED RESULT) ALLOW
SPACE for PERFORMANCE APPRAISAL to be done at end of rating period
b. TIMELINESS OF WORK OR PRODUCT
PERFORMANCE STANDARD (EXPECTED RESULT) ALLOW
SPACE for PERFORMANCE APPRAISAL
c. SELECTION AND DEVELOPMENT OF STAFF
PERFORMANCE STANDARD (EXPECTED RESULT) ALLOW
SPACE for PERFORMANCE APPRAISAL
d. APPRAISING SES AND NON-SES STAFF (INCLUDING ALL PHASES OF THE PERFORMANCE APPRAISAL PROCESS)
Continue in same manner as a, b, and c above
e. RESOURCE UTILIZATION
Continue in same manner as a, b, and c above
f. EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION EFFORTS *(Relating to all groups protected by antidiscrimination laws and covering all employment practices)*
Continue in same manner as a, b, and c above
g. ADDITIONAL SUBELEMENTS *(If appropriate)*
Continue in same manner as a, b, and c above.

SUBELEMENT a: Planning and Organizing

PERFORMANCE STANDARD:

Effectively organize the staff's work. Recommend to the Commission appropriate planning and program goals. Takes initiative on required adjustments in plans due to consolidation of the Agency.

PERFORMANCE APPRAISAL:

Vic Stello has been a vigorous leader in the effort to develop more effective means for planning and organizing NRC staff work activities. He frequently reviews NRC staff performance and, through effective reliance on senior NRC management, ensures that all NRC staff human resources are productively employed in meeting agency goals. He may be relied upon to take the initiative to make adjustments in NRC programs in order to meet changing agency requirements. He involves himself personally in high priority projects and facilitates closure, as appropriate, on projects important to the agency's mission.

PERFORMANCE APPRAISAL

O	E	S	M	U
X				

(Use continuation page, NRC Form 351A, as required. Number 3A, 3B, 3C, etc.) PERFORMANCE RATING *(To be completed for each critical element and subelement)*

PAGE 2a

NRC FORM 381A
[illegible]
[illegible]

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES)
PERFORMANCE PLANNING AND APPRAISAL
(Continuation)

SENIOR EXECUTIVE TYPED NAME (Last, first, middle initial)
STELLO, Victor, Jr.

PLANNING INSTRUCTIONS [illegible]
STEP 1 - CRITICAL ELEMENTS AND SUBELEMENTS, [illegible]
STEP 2 - PERFORMANCE STANDARDS (EXPECTED RESULTS), [illegible]
STEP 4 - PERFORMANCE APPRAISAL [illegible] PERFORMANCE STANDARD
O - OUTSTANDING E - EXCELLENT S - FULLY SATISFACTORY M - MINIMALLY SUCCESSFUL U - UNSATISFACTORY

PERFORMANCE APPRAISAL

O	E	S	M	U

SUBELEMENT b: TIMELINESS AND QUALITY OF WORK OR PRODUCT

PERFORMANCE STANDARD:

Work should be implemented in a sufficiently timely manner to achieve objectives. Meet Commission-established deadlines. When deadlines cannot be met with due regard to quality of work, prompt notice should be given to the Commission in order to allow adjustments.

PERFORMANCE APPRAISAL

O	E	S	M	U
X				

Vic Stello has been effective in assuring that the staff meets deadlines and achieves agency objectives in a timely manner. He regularly monitors the progress of NRC programs and their management in order to assure that agency work is completed and presented to the Commission for action in a timely manner. Work products are submitted in accordance with Commission established deadlines and are of high quality to facilitate Commission decisionmaking. Where unavoidable delays occur, he promptly notifies the Chairman and Commission and seeks their guidance as needed.

PERFORMANCE RATING (To be completed for each critical element and subelement)

PAGE 2b

NRC FORM 351A
U.S. NUCLEAR REGULATORY COMMISSION
SENIOR EXECUTIVE SERVICE (SES)
PERFORMANCE PLANNING AND APPRAISAL
(Continuation)

SENIOR EXECUTIVE TYPED NAME (Last, first, middle initial)
STELLO, Victor, Jr.

PLANNING INSTRUCTIONS: [illegible]
STEP 1 - CRITICAL ELEMENTS AND SUBELEMENTS, [illegible]
STEP 2 - PERFORMANCE STANDARDS (EXPECTED RESULTS), [illegible]
STEP 4 - PERFORMANCE APPRAISAL, [illegible] PERFORMANCE STANDARD
O - OUTSTANDING E - EXCELLENT S - FULLY SATISFACTORY M - MINIMALLY SUCCESSFUL U - UNSATISFACTORY

SUBELEMENT c: SELECTION AND DEVELOPMENT OF STAFF

PERFORMANCE STANDARD:

Develop and implement enhanced programs for staff development, particularly in light of the recent reorganization of the staff. Also, focuses on integrating organizational planning with career development initiatives and succession planning.

PERFORMANCE APPRAISAL:

Vic Stello has shown leadership as an involved senior manager. He is sensitive to both the short and long run management needs of the NRC. In this connection, under his leadership, agency staff development is being appropriately emphasized and succession planning is being initiated. He works closely and cooperatively with the Chairman and the Commission in fulfilling his responsibilities for managing the recent reorganization of the NRC staff. Rotational assignments both within the headquarters organization and between the NRC field offices and the NRC headquarters operations are being encouraged to ensure effective agency management across the breadth of agency programs.

PERFORMANCE APPRAISAL				
O	E	S	M	U
X				

PERFORMANCE RATING (To be completed for each critical element and subelement)

PAGE 2c

NRC FORM 321A [illegible]
U.S. NUCLEAR REGULATORY COMMISSION
SENIOR EXECUTIVE SERVICE (SES)
PERFORMANCE PLANNING AND APPRAISAL
(Continuation)

SENIOR EXECUTIVE TYPED NAME (Last, first, middle initial)
STELLO, Victor, Jr.

PLANNING INSTRUCTIONS: [illegible]
STEP 1 – CRITICAL ELEMENTS AND SUBELEMENTS, [illegible]
STEP 2 – PERFORMANCE STANDARDS (EXPECTED RESULTS), [illegible]
STEP 4 – PERFORMANCE APPRAISAL [illegible] PERFORMANCE STANDARD
O – OUTSTANDING E – EXCELLENT S – FULLY SATISFACTORY M – MINIMALLY SUCCESSFUL U – UNSATISFACTORY

SUBELEMENT d: APPRAISING AND NON-SES STAFF

Appraising SES and non-SES staff, including all phases of the performance appraisal process.

PERFORMANCE STANDARD:

Performance plans are issued in a timely fashion. Appraisal and reviews are conducted in a fair and objective manner. The conduct of performance appraisal functions is generally in accordance with agency procedures time tables.

PERFORMANCE APPRAISAL:

Vic Stello is particularly diligent in appraising those Senior Executive Service personnel who report to him. Moreover, he ensures that other senior NRC managers fully meet their responsibilities to appraise those personnel within their organizations. He is known for the timely, fair, and objective manner in which he performs his appraisal functions.

PERFORMANCE APPRAISAL

O	E	S	M	U
X				

PERFORMANCE RATING (To be completed for each critical element and subelement)

PAGE 2d

NRC Form 381A [illegible] U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES)
PERFORMANCE PLANNING AND APPRAISAL
(Continuation)

SENIOR EXECUTIVE [illegible]

STELLO, Victor, Jr.

[illegible]
STEP 1 - CRITICAL ELEMENTS AND SUBELEMENTS [illegible]
STEP 3 - PERFORMANCE STANDARDS (EXPECTED RESULTS): [illegible]
STEP 4 - PERFORMANCE APPRAISAL [illegible] PERFORMANCE STANDARD
O - OUTSTANDING E - EXCELLENT S - FULLY SATISFACTORY M - MINIMALLY SUCCESSFUL U - UNSATISFACTORY

PERFORMANCE APPRAISAL

O E S M U

SUBELEMENT e: RESOURCE UTILIZATION

PERFORMANCE STANDARD:

Insure that personnel and budgetary allocations are efficiently tailored to the changing needs of the agency.

PERFORMANCE APPRAISAL:

Vic Stello has fully considered and effectively reflects in his decisions the agency mission and priorities on resource allocation and adjustment. He brings schedule and resource problems to the attention of the Commission and recommends alternative courses of action that support the Five Year Plan and the agency mission. His performance in resource utilization is judged to be outstanding. X

PERFORMANCE RATING (To be completed for each critical element and subelement)

PAGE 2e

NRC FORM 351A
(9-82)
NRCM 4162

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES)
PERFORMANCE PLANNING AND APPRAISAL
(Continuation)

SENIOR EXECUTIVE TYPED NAME (Last, first, middle initial)

STELLO, Victor, Jr.

PLANNING INSTRUCTIONS: At the beginning of the rating period the Senior Executive and Supervisory Executive must jointly develop
STEP 1 - CRITICAL ELEMENTS AND SUBELEMENTS and identify the essential
STEP 2 - PERFORMANCE STANDARDS (EXPECTED RESULTS) allowing space for the Supervising Executive to provide, at end of rating period
STEP 4 - PERFORMANCE APPRAISAL a narrative justification of appraisal level, to follow immediately after each PERFORMANCE STANDARD
O - OUTSTANDING E - EXCELLENT S - FULLY SATISFACTORY M - MINIMALLY SUCCESSFUL U - UNSATISFACTORY

SUBELEMENT f: EQUAL EMPLOYMENT AND AFFIRMATIVE ACTION EFFORTS

PERFORMANCE STANDARD:

Identify problems in meeting EEO goals specified in Commission-approved EEO plan and take appropriate action to eliminate problems.

PERFORMANCE APPRAISAL:

The agency continued its strong efforts to improve in its EEO plan performance. EEO problems have been resolved in a professional and timely manner. Vic Stello has been especially effective in sensitizing the agency's managers and staff to the goals of the EEO program. His leadership has resulted in successes in an agency whose positions are highly technical in nature and where opportunities to improve through recruitment of new personnel have been few due to FTE and resource limitations.

PERFORMANCE APPRAISAL	O	E	S	M	U
Subelement f	X				
PERFORMANCE RATING (To be completed for each critical element and subelements)					

PAGE 3

NRC FORM 301

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES)
PERFORMANCE PLANNING AND APPRAISAL

SENIOR EXECUTIVE – TYPED NAME (Last, first, middle initial)

STELLO, Victor, Jr.

PLANNING INSTRUCTIONS: At the beginning of the rating period the Senior Executive and Supervising Executive must jointly develop
STEP 1 – CRITICAL ELEMENTS AND SUBELEMENTS, and identify the essential
STEP 2 – PERFORMANCE STANDARDS (EXPECTED RESULTS), allowing space for
STEP 4 – PERFORMANCE APPRAISAL, a narrative justification of rating level, to follow immediately after each PERFORMANCE STANDARD.
O – OUTSTANDING E – EXCELLENT S – FULLY SUCCESSFUL M – MINIMALLY SATISFACTORY U – UNSATISFACTORY

PERFORMANCE APPRAISAL
O E S M U

INDIVIDUAL PERFORMANCE (Coverage of SUBELEMENTS a and b is mandatory, additional SUBELEMENTS are optional)
a. PROBLEM SOLVING
PERFORMANCE STANDARD (EXPECTED RESULT) ALLOW
SPACE for PERFORMANCE APPRAISAL to be done at the end of the rating period
b. INTERPERSONAL SKILLS, INCLUDING COMMUNICATIONS
PERFORMANCE STANDARD (EXPECTED) ALLOW
SPACE for PERFORMANCE APPRAISAL to be done at the end of the rating period
c. ADDITIONAL SUBELEMENTS (if appropriate)
Continue in same manner as a and b above.

SUBELEMENT a: PROBLEM SOLVING

PERFORMANCE STANDARD:

Gives personal attention to problems where solutions involve interoffice or interagency cooperation.

PERFORMANCE APPRAISAL:

Vic Stello is particularly noted for his ability to solve complex and difficult agency problems. In part, this is because he is an involved, "hands on" manager and keeps himself fully and currently informed on emerging regulatory problems in need of action by the NRC. When problems emerge, he personally takes the issues on and brings together management teams as needed to effect expeditious resolution. His managerial style is marked by professionalism, and a thoughtful, analytical approach. Most importantly, Vic Stello has the courage of his convictions and, as needed, will defend his proposals before the Commission, the Congress and the American people.

O	E	S	M	U
X				

(Use continuation page, NRC Form 301A, as required. Number pages 3A, 3B, 3C, etc.) PERFORMANCE RATING (To be completed for each critical element and subelement)

PAGE 3a

NRC FORM 351A
[illegible]
NRCM 4152

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES)
PERFORMANCE PLANNING AND APPRAISAL
(Continuation)

SENIOR EXECUTIVE TYPED NAME (Last, first, middle initial)
STELLO, Victor, Jr.

PLANNING INSTRUCTIONS: At the beginning of the rating period the Senior Executive and Supervisory Executive must jointly develop [illegible]
STEP 1 - CRITICAL ELEMENTS AND SUBELEMENTS, and identify the [illegible]
STEP 2 - PERFORMANCE STANDARDS (EXPECTED RESULTS), allowing space for the Supervisory Executive to provide, at end of rating period [illegible]
STEP 4 - PERFORMANCE APPRAISAL, a narrative justification of selection level, to follow immediately after each PERFORMANCE STANDARD
O - OUTSTANDING E - EXCELLENT F - FULLY SATISFACTORY M - MINIMALLY SUCCESSFUL U - UNSATISFACTORY

PERFORMANCE APPRAISAL

O	E	S	M	U
X				

SUBELEMENT b: INTERPERSONAL SKILLS INCLUDING COMMUNICATIONS

PERFORMANCE STANDARD

Demonstrates strong interpersonal relationships with senior Agency management. He is responsible for bringing the senior managers together to work as a team in the development of the Agency's first strategic planning effort. He maintains an open door policy with staff and has encouraged staff to provide him with their views and suggestions. Does an outstanding job of developing a team approach to management and has inspired the senior staff to be more proactive and action oriented in planning and carrying out Agency programs.

PERFORMANCE APPRAISAL

Vic Stello is a particularly outstanding manager of the NRC staff. He excels in fostering interpersonal relationships among senior managers and provides dynamic and forceful leadership for all phases of the regulatory program. He has consistently supported the concept of bringing agency managers together as a team. He initiated and fostered the concept of teamwork as a central element in the Leadership Development Program, which he personally explained to the agency's SES managers in a series of meetings held during this rating period. He is also a strong advocate of the Commission's Open Door and Differing Professional Opinion policies, and has proposed during this rating period revisions in those policies designed to enhance the fairness and objectivity of their implementation. He is an exceptional motivator of human resources to meet agency objectives. Personal leadership - leadership by example - is Vic Stello's strong point.

PERFORMANCE RATING (To be completed for each critical element and subelement)

PAGE 3b

NRC FORM 351A
(5-80)
NRCM 4152

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES)
PERFORMANCE PLANNING AND APPRAISAL
(Continuation)

SENIOR EXECUTIVE TYPED NAME (Last, first, middle initial)

STELLO, Victor, Jr.

PLANNING INSTRUCTIONS: At the beginning of the rating period the Senior Executive and Supervisory Executive must jointly develop [illegible]
STEP 1 – CRITICAL ELEMENTS AND SUBELEMENTS, [illegible]
STEP 2 – PERFORMANCE STANDARDS (EXPECTED RESULTS), allowing space for the Supervisory Executive to provide, at end of rating period
STEP 4 – PERFORMANCE APPRAISAL, a narrative justification of selection [illegible], to follow immediately after each PERFORMANCE STANDARD
O – OUTSTANDING E – EXCELLENT S – FULLY SATISFACTORY M – MINIMALLY SUCCESSFUL U – UNSATISFACTORY

SUBELEMENT c: INITIATIVE

PERFORMANCE STANDARD

Recognize major policy questions requiring Commission decision and initiative action to bring these to Commission attention. Use initiative to develop solutions to problems before they become critical.

PERFORMANCE APPRAISAL:

Vic Stello is an outstanding NRC manager in taking the initiative to recognize emerging major policy issues which may require agency action. He consistently acts promptly to develop solutions to regulatory problems before they become critical and adversely impact the agency's statutory mission to protect the public health and safety. He is adept at recognizing policy implications of proposed actions, and frequently consults with the Chairman and the Commission, making solid recommendations as to the appropriate course of action for resolving significant agency problems.

PERFORMANCE APPRAISAL	O	E	S	M	U
	X				

PERFORMANCE RATING (To be completed for each critical element and subelement.)

PAGE 4

NRC FORM 301
(5-87)
NRCM 4172

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES)
PERFORMANCE PLANNING AND APPRAISAL

SENIOR EXECUTIVE – TYPED NAME (Last, first, middle initial)
STELLO, Victor, Jr.

SUPERVISING EXECUTIVE: At the beginning of the rating period, STEPS 1, 2 and 3 are completed. At the end of the rating period complete **STEP 4.**

STEP 4 -- PERFORMANCE APPRAISAL/EVALUATION *(Continued)*. **SUPERVISING EXECUTIVE:** Place Summary rating *(Mandatory)*, any recommended pay level change, reassignment or removal action in STEP 4 AND 6 CONTINUED, on the Summary Page, after STEP 6, sign and date.

SUPERVISING EXECUTIVE's COMMENTS *(Brief narrative summary) May document areas for future emphasis or training and development needs. Begin performance planning for the next rating period, using a new NRC Form 301.*

Vic is an outstanding and dynamic leader. He is willing to take on the tough regulatory issues which face this agency, both on a day-to-day basis and over the longer term and does so in a thoughtful, intelligent manner. In part, his outstanding performance as Executive Director for Operations is attributable to his willingness to take the initiative in solving agency regulatory problems. He is fully committed to public health and safety. Many of the issues facing the NRC are surrounded by substantial controversy. A large measure of Vic's outstanding performance is due to the fact that he is a man of keen and honest analytical ability, but also one who has the courage of his convictions. He is truly one of the best of the best public servants in the U.S. government!

STEP 4A — If Reviewing Official used in office, forward to that official **(STEP 5).** **STEP 4B** — If Reviewing Official not used, proceed to **STEP 6.**

STEP 5 — REVIEWING OFFICIAL *(Optional by Office) Reviewer cannot change appraisal or rating.* Indicate only if review has been made. Complete and return within three workdays. ☐ YES

STEP 6 — SUPERVISING EXECUTIVE: Discuss appraisal with Senior Executive. Sign and date **STEP 4 AND 6 CONTINUED** on the Summary Page. Note: If there is another supervisory level between Supervising Executive and Ranking Official, send an information copy to that official.

STEP 7 — SENIOR EXECUTIVE: I have reviewed and discussed my performance appraisal with my supervisor. My signature does not imply that I agree with the appraisal or rating. *(Complete this step and return this appraisal to your supervisor within five workdays.)*

INDEPENDENT REVIEW
☐ REQUESTED ☑ NOT REQUESTED

SENIOR EXECUTIVE'S SIGNATURE *(Mandatory)*
DATE 7/18/88

SENIOR EXECUTIVE'S COMMENTS *(Optional. Use additional page if necessary)*

STEP 8 — SUPERVISING EXECUTIVE On receipt of appraisal, supply one copy to the Senior Executive and
STEP 8A — If an Independent Review is requested, send the appraisal to the Performance Review Board.
STEP 8B — If an Independent Review is not requested, send the original of the appraisal to the Ranking Official.

STEP 9 — PERFORMANCE REVIEW BOARD Appoint an Independent Executive Reviewer, if requested by the Senior Executive, within two workdays. *(Mandatory, if requested. Insert name, position title and organization below.)*

INDEPENDENT EXECUTIVE APPOINTED	POSITION TITLE	ORGANIZATION

STEP 10 — INDEPENDENT EXECUTIVE REVIEWER: Conduct review within five workdays of assignment. *(Mandatory)* Indicate below whether you agree or disagree with the supervisor's recommended rating and why *(Use additional pages if necessary).* Place recommended summary rating, any recommended pay level change, reassignment or removal action in **STEP 10 CONTINUED,** on the Summary Page.

NRC FORM 381
(5-84)
NRCM 4152

SENIOR EXECUTIVE SERVICE (SES) PERFORMANCE PLANNING AND APPRAISAL SUMMARY PAGE

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE – TYPED NAME (Last, first, middle initial)
STELLO, VICTOR, JR.

INSTRUCTIONS: [illegible] page contains the final steps required for the SES performance appraisal process, [illegible] Complete only the upper right portion of this page and proceed to page 1.

STEP	SUMMARY RATING					PAY LEVEL		RANKING		AWARD RECOMMENDED			PLACEMENT		SIGNATURE	DATE
	O	E	S	M	U	FROM ES	TO ES	TOP 5%	7-20%	NO	YES	AMOUNT	REASSIGN	REMOVE		
4 AND 6 CONTINUED	X														SUPERVISING EXECUTIVE Lando W. Zech Jr.	7-14-87
10 CONTINUED															INDEPENDENT EXECUTIVE REVIEWER (If Requested)	
11											X				RANKING OFFICIAL Lando W. Zech Jr.	7-30-87
12	X					-	-				X				PERFORMANCE REVIEW BOARD	SEP 0 9 1987
13	X														RATING OFFICIAL APPOINTING AUTHORITY (Final Approval) Lando W. Zech Jr.	OCT 0 9 1987
14						-	-				X	10,000			AWARDING AUTHORITY (Final Approval) x Lando W. Zech Jr.	OCT 0 9 1987

PERFORMANCE REVIEW BOARD COMMENTS (Optional)

~~G. Arlotto~~
P. Bird
J. Fitzgerald
J. Hoyle
E. Jordan
W. Kerr
W. McDonald
F. Miraglia
R. Martin
~~J. Montgomery~~
~~J. Sniezek~~
H. Thompson

RATING OFFICIAL COMMENTS (Optional)

AWARDING AUTHORITY COMMENTS (Optional)

PERFORMANCE RATING DEFINITIONS

OUTSTANDING (O)

[illegible]

EXCELLENT (E)

[illegible]

FULLY SUCCESSFUL (S)

[illegible]

MINIMALLY SATISFACTORY (M)

[illegible]

UNSATISFACTORY (U)

[illegible]

APPRAISAL SUMMARY: PERFORMANCE RATINGS

EXECUTIVE'S NAME: Victor Stello

CRITICAL ELEMENTS AND SUBELEMENTS	PERFORMANCE RATING SUBELEMENT	 CRITICAL ELEMENT
A. PROGRAM GOALS (Up to 3)		
1. Direct and manage the Agency's licensing, regulatory and administrative Programs.		0
a. Direct staff efforts toward achievement of the Commission PPG and EDO Program guidance	0	
b. Direct and coordinate implementation of FY87 budget	0	
c. Continue development of FY88 and FY89 budget	0	
B. MANAGEMENT EFFECTIVENESS GOALS		0
a. Planning and Organizing	0	
b. Timeliness of Work	0	
c. Selection and Development of Staff	0	
d. Appraising SES and Non-SES Staff	0	
e. Resource Utilization	0	
f. Equal Employment & Affirmative Action Efforts	0	
C. INDIVIDUAL PERFORMANCE		0
a. Problem Solving	0	
b. Interpersonal Skills Including Communications	0	
c. Initiative	0	
d.		
SUMMARY RATING		0

SUPERVISING EXECUTIVE'S BRIEF NARRATIVE SUMMARY (from page 4 of Form 351):

Victor Stello is an outstanding administrator and an effective leader. He keeps abreast of all aspects of the staff's activities. He shows outstanding initiative and judgment in identifying and resolving problems. His talents as a manager and his responsiveness to the Commission's needs bring credit to the entire NRC.

Victor Stello is an exceptionally outstanding public servant - certainly one of the finest in our country!

PAGE 1

NRC FORM 381
(6-84)
NRCM 4132

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES) PERFORMANCE PLANNING AND APPRAISAL

SENIOR EXECUTIVE – TYPED NAME (Last, first, middle initial): STELLO, VICTOR, JR.

TITLE: Executive Director for Operations

ORGANIZATION: EDO

SIGNATURE:

DATE: 1/27/87

RATING PERIOD FROM: 7/1/86 TO: 6/30/87

CAREER APPOINTEE: ☒ YES ☐ NO

ES LEVEL: ES 5

SUPERVISING EXECUTIVE – TYPED NAME, TITLE, AND ORGANIZATION: Lando W. Zech, Jr, Chairman

SIGNATURE: Lando W. Zech Jr

DATE: 1-29-87

STEP 3 – REVIEW/APPROVAL OF PERFORMANCE PLAN (To be completed AFTER STEPS 1 AND 2 below. Mandatory)

REVIEWING OFFICIAL – TYPED NAME, TITLE, AND ORGANIZATION:

SIGNATURE:

DATE:

PLANNING INSTRUCTIONS. At the beginning of the rating period the Senior Executive and Supervising Executive must jointly develop
STEP 1 – CRITICAL ELEMENTS AND SUBELEMENTS; and identify the associated
STEP 2 – PERFORMANCE STANDARDS *(EXPECTED RESULTS)*, allowing space for
STEP 4 – PERFORMANCE APPRAISAL, a narrative justification of rating level, to follow immediately after each **PERFORMANCE STANDARD. STEP 4** To be provided by the Supervising Executive at the end of the rating period.
O – OUTSTANDING E – EXCELLENT S – FULLY SUCCESSFUL M – MINIMALLY SATISFACTORY U – UNSATISFACTORY

PERFORMANCE APPRAISAL: O | E | S | M | U

PROGRAM GOAL(S) At least one is mandatory, up to three are permitted.
1. SPECIFIC PROGRAM GOAL CRITICAL ELEMENT (Number 1, 2 and 3)
PERFORMANCE STANDARD (EXPECTED RESULTS), allow space for PERFORMANCE APPRAISAL to be done at end of rating period.
a. SUBELEMENTS (based on assignments, there may be more than one SUBELEMENT letter sequentially, a, b, c, etc.)
PERFORMANCE STANDARD (EXPECTED RESULT) to follow each SUBELEMENT. ALLOW SPACE for PERFORMANCE APPRAISAL, after each STANDARD, to be done at the end of the rating period.

PROGRAM GOAL CRITICAL ELEMENT:

Direct and manage the Agency's licensing, regulatory, and administrative programs under the general supervision of the Chairman in accordance with policy directives of the Commission.

SUBELEMENT a.

Direct the staff effort toward achievement of the goals of the Commission PPG and EDO Program Guidance.

PERFORMANCE STANDARD:

The aims of the PPG are translated into effective staff action. Proper judgment is applied in balancing priorities when conflicts arise. Uses consistent set of tools to evaluate priorities and monitor achievements.

PERFORMANCE APPRAISAL:

Does an outstanding job of translating the aims of the PPG into effective staff action and managing the development of the Five Year Plan. Demonstrates exemplary judgement in establishing and balancing priorities. Develops innovative tools, including performance indicators for nuclear facilities, to improve the agency's ability to recognize changing safety performance. Extraordinarily effective in setting internal goals to meet Commission objectives and in monitoring progress toward goals.

PERFORMANCE RATING: XX (O)

(Use continuation page, NRC Form 381A, as required. Number pages 1A, 1B, 1C, etc.)

PERFORMANCE RATING (To be completed for each critical element and subelements)

NRC FORM 412A (Interim)

U.S. NUCLEAR REGULATORY COMMISSION

NON-SES PERFORMANCE APPRAISAL SYSTEM
PERFORMANCE PLAN *(CONTINUATION)*

EMPLOYEE (Name—Last, first, middle initial): STELLO, VICTOR, JR.

RATING PERIOD FROM 7/1/86 TO 6/30/87

PERFORMANCE ELEMENTS, STANDARDS, AND APPRAISAL	O	E	FS	MS	U

SUBELEMENT b.

Direct and coordinate implementation of the FY 1987 budget to accommodate Agency requirements.

PERFORMANCE STANDARD:

Implementation of the budget provides for efficient and effective utilization of resources. Timely and balanced adjustments are made to reflect changing priorities.

PERFORMANCE APPRAISAL:
Consistently excels in achieving effective and efficient utilization of agency resources. Keeps within budget and manages resources to meet unforeseen developments and demands on the agency. Assures that resources are available to meet the agency's essential programs.

	O	E	FS	MS	U
PERFORMANCE RATING:	X				

SUBELEMENT c.

Continue development of the FY 1988 and FY 1989 budgets.

PERFORMANCE STANDARD:

The budget proposals reflect the relative priority of Agency's program goals.

PERFORMANCE APPRAISAL:
Budget proposals are well-reasoned and reflect the Commission's priorities for agency program goals and objectives. The proposals allocate resources to meet these priorities in a cost effective manner. Timely budget submissions are provided to the Commission for its action in order to meet external deadlines to OMB and the Congress. Effectively manages integration of the budget and planning process.

	O	E	FS	MS	U
PERFORMANCE RATING:	X				
CRITICAL ELEMENT PERFORMANCE RATING:	X				

PAGE 2

NRC FORM 381 [illegible]
NRCM 4152

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES)
PERFORMANCE PLANNING AND APPRAISAL

SENIOR EXECUTIVE – TYPED NAME (Last, first, middle initial)
STELLO, VICTOR, JR.

PLANNING INSTRUCTIONS: At the beginning of the rating period the Senior Executive and Supervising Executive must jointly develop
STEP 1 – CRITICAL ELEMENTS AND SUBELEMENTS, and identify the [illegible]
STEP 2 – PERFORMANCE STANDARDS (EXPECTED RESULTS), allowing space for
STEP 4 – PERFORMANCE APPRAISAL, a narrative justification of rating level, to follow immediately after each PERFORMANCE STANDARD
O – OUTSTANDING E – EXCELLENT S – FULLY SUCCESSFUL M – MINIMALLY SATISFACTORY U – UNSATISFACTORY

PERFORMANCE APPRAISAL: O E S M U

MANAGEMENT EFFECTIVENESS GOAL (Coverage of SUBELEMENTS a through f mandatory, additional subelements are optional)
a. PLANNING AND ORGANIZING
PERFORMANCE STANDARD (EXPECTED RESULT) ALLOW
SPACE for PERFORMANCE APPRAISAL to be done at end of rating period
b. TIMELINESS OF WORK OR PRODUCT
PERFORMANCE STANDARD (EXPECTED RESULT) ALLOW
SPACE for PERFORMANCE APPRAISAL
c. SELECTION AND DEVELOPMENT OF STAFF
PERFORMANCE STANDARD (EXPECTED RESULT) ALLOW
SPACE for PERFORMANCE APPRAISAL
d. APPRAISING SES AND NON-SES STAFF (INCLUDING ALL PHASES OF THE PERFORMANCE APPRAISAL PROCESS)
Continue in same manner as a, b, and c above
e. RESOURCE UTILIZATION
Continue in same manner as a, b, and c above
f. EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION EFFORTS (Relating to all groups protected by antidiscrimination laws and covering all employment practices)
Continue in same manner as a, b, and c above
g. ADDITIONAL SUBELEMENTS (if appropriate)
Continue in same manner as a, b, and c above.

SUBELEMENT a: PLANNING AND ORGANIZING

PERFORMANCE STANDARD:

Effectively organize the staff's work. Recommend to the Commission appropriate planning and program goals. Takes initiative on required adjustments in plans due to consolidation of the Agency.

PERFORMANCE APPRAISAL:

Highly effective in organizing the staff's work and recommending appropriate planning and program goals to the Commission. Mr. Stello is an excellent leader who is always on top of all aspects of the work under his direction. Has also demonstrated exceptional ability to make needed adjustments in program and resource plans due to consolidation of the agency.

	O	E	S	M	U
PERFORMANCE RATING:	X				

SUBELEMENT b: TIMELINESS AND QUALITY OF WORK OR PRODUCT

PERFORMANCE STANDARD:

Work should be implemented in a sufficiently timely manner to achieve objectives. Meet Commission-established deadlines. When deadlines cannot be met with due regard to quality of work, prompt notice should be given to the Commission in order to allow adjustments.

PERFORMANCE APPRAISAL:

Outstanding in meeting deadlines and achieving objectives in the dynamic regulatory environment of the NRC. Diligent in monitoring status of work in progress to avoid delays. Assures that work products are consistently of high quality and that the NRC staff is well prepared for briefings to the Commission. Conscientious in keeping the Commission informed on all current matters of regulatory importance to the NRC.

	O	E	S	M	U
PERFORMANCE RATING:	X				

(Use continuation page, NRC Form 381A, as required Number 3A, 3B, 3C, etc.) PERFORMANCE RATING (To be completed for each critical element and subelement)

PAGE 2a

NRC FORM 351A
U.S. NUCLEAR REGULATORY COMMISSION
SENIOR EXECUTIVE SERVICE (SES)
PERFORMANCE PLANNING AND APPRAISAL
(Continuation)

SENIOR EXECUTIVE - TYPED NAME (Last, first, middle initial)
STELLO, VICTOR, JR.

STEP 1 - CRITICAL ELEMENTS AND SUBELEMENTS
STEP 2 - PERFORMANCE STANDARDS (EXPECTED RESULTS)
STEP 4 - PERFORMANCE APPRAISAL
O - OUTSTANDING E - EXCELLENT S - FULLY SATISFACTORY M - MINIMALLY SUCCESSFUL U - UNSATISFACTORY

PERFORMANCE APPRAISAL: O E S M U

SUBELEMENT c: SELECTION AND DEVELOPMENT OF STAFF

PERFORMANCE STANDARD:

Develop guidance for staff so that vacancies are filled expeditiously with qualified personnel to insure full utilization of the agency's FTE allocation.

PERFORMANCE APPRAISAL:

Provides timely and complete guidance to the staff to clearly define the personnel resource needs required to effectively carry out the agency's programs. Uses outstanding judgement in making management selections. Has initiated a more structural approach to succession planning which will improve the mobility and development of SES personnel.

PERFORMANCE RATING: X

SUBELEMENT d: APPRAISING AND NON-SES STAFF

Appraising SES and non-SES staff, including all phases of the performance appraisal process.

PERFORMANCE STANDARD:

Performance plans are issued in a timely fashion. Appraisals and reviews are conducted in a fair and objective manner. The conduct of performance appraisal functions is generally in accordance with agency procedures time tables.

PERFORMANCE APPRAISAL:

Performance plans are issued in a timely fashion. Assures that appraisals and reviews are conducted in a fair and objective manner and are conducted in accordance with Agency procedures.

PERFORMANCE RATING: X

PERFORMANCE RATING (To be completed for each critical element and subelement)

PAGE 2b

NRC FORM 351A
(9-84)
NRCM 4152

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES)
PERFORMANCE PLANNING AND APPRAISAL
(Continuation)

SENIOR EXECUTIVE - TYPED NAME (Last, first, middle initial)

STELLO, VICTOR, JR.

PLANNING INSTRUCTIONS. [illegible]
STEP 1 – CRITICAL ELEMENTS AND SUBELEMENTS: [illegible]
STEP 2 – PERFORMANCE STANDARDS (EXPECTED RESULTS), [illegible]
STEP 4 – PERFORMANCE APPRAISAL, [illegible] PERFORMANCE STANDARD.
O – OUTSTANDING E – EXCELLENT S – FULLY SATISFACTORY M – MINIMALLY SUCCESSFUL U – UNSATISFACTORY

PERFORMANCE APPRAISAL: O | E | S | M | U

SUBELEMENT e: RESOURCE UTILIZATION

PERFORMANCE STANDARD:

Insure that personnel and budgetary allocations are efficiently tailored to the changing needs of the agency.

PERFORMANCE APPRAISAL:
Does an outstanding job of ensuring that resource allocations are organized to meet the agency's needs, and that the agency's resources are utilized effectively. Constantly is aware and takes into consideration the status of the agency's resource allocations and utilization and is alert to shifting resources in response to changing agency needs. Provides extremely effective management of the agency's FTE allocation.

Performance Rating: X

SUBELEMENT f: EQUAL EMPLOYMENT AND AFFIRMATIVE ACTION EFFORTS

PERFORMANCE STANDARD:

Identify problems in meeting EEO goals specified in Commission-approved EEO plan and take appropriate action to eliminate problems.

PERFORMANCE APPRAISAL:
He is extremely effective in achieving the agency's EEO goals and in taking the appropriate action to eliminate problems. Has developed a creative affirmative action and upward mobility strategy, and provided agency personnel with appropriate training and work experience. Makes managers aware of the EEO responsibilities and has an excellent rapport with the agency's EEO advisory committee.

Performance Rating: X

CRITICAL ELEMENT PERFORMANCE RATING: X

PERFORMANCE RATING (To be completed for each critical element and subelement)

NRC FORM 351 [illegible]

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES)
PERFORMANCE PLANNING AND APPRAISAL

SENIOR EXECUTIVE – TYPED NAME (Last, first, middle initial)

STELLO, VICTOR, JR.

[illegible]
STEP 1 – CRITICAL ELEMENTS AND SUBELEMENTS, [illegible]
STEP 2 – PERFORMANCE STANDARDS (EXPECTED RESULTS), [illegible]
STEP 4 – PERFORMANCE APPRAISAL, [illegible] PERFORMANCE STANDARD
O – OUTSTANDING E – EXCELLENT S – FULLY SUCCESSFUL M – MINIMALLY SATISFACTORY U – UNSATISFACTORY

PERFORMANCE APPRAISAL: O E S M U

INDIVIDUAL PERFORMANCE (Coverage of SUBELEMENTS a and b is mandatory; additional SUBELEMENTS are optional)
a. PROBLEM SOLVING
PERFORMANCE STANDARD (EXPECTED RESULT) ALLOW
SPACE for PERFORMANCE APPRAISAL to be done at the end of the rating period
b. INTERPERSONAL SKILLS, INCLUDING COMMUNICATIONS
PERFORMANCE STANDARD (EXPECTED) ALLOW
SPACE for PERFORMANCE APPRAISAL to be done at the end of the rating period
c. ADDITIONAL SUBELEMENTS (if appropriate)
Continue in same manner as a and b above

SUBELEMENT a: PROBLEM SOLVING

PERFORMANCE STANDARD:

Give personal attention to problems where solutions involve interoffice or interagency cooperation.

PERFORMANCE APPRAISAL:

Does an outstanding job of identifying potential problems and providing guidance for the solution of existing problem areas. Once guidance is given, he follows through to be sure that the appropriate solution has been implemented. His ability to reach sound conclusions and develop clear, effective recommendations has been a major factor in the effectiveness of the agency.

Performance Rating: X

SUBELEMENT b: INTERPERSONAL SKILLS INCLUDING COMMUNICATIONS

PERFORMANCE STANDARD:

Interpersonal relationships with office directors should provide strong management leadership. Maintain open door policy with staff for counsel, discussion or hearing.

PERFORMANCE APPRAISAL:

Demonstrates strong interpersonal relationships with senior agency management. He is responsible for bringing the senior managers together to work as a team in the development of the agency's first strategic planning effort. He maintains an open door policy with staff and has encouraged staff to provide him with their views and suggestions. Does an outstanding job of developing a team approach to management and has inspired the senior staff to be more proactive and action oriented in planning and carrying out agency programs.

Performance Rating: X

(Use continuation page, NRC Form 351A, as required. Number pages 3A, 3B, 3C, etc.) PERFORMANCE RATING: To be completed for each critical element and subelement

PAGE 3a

NRC FORM 351A [illegible]

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES)
PERFORMANCE PLANNING AND APPRAISAL
(Continuation)

SENIOR EXECUTIVE – TYPED NAME (Last, first, middle initial)

STELLO, VICTOR, JR.

PLANNING INSTRUCTIONS. [illegible]
STEP 1 – CRITICAL ELEMENTS AND SUBELEMENTS; [illegible]
STEP 2 – PERFORMANCE STANDARDS (EXPECTED RESULTS), [illegible]
STEP 4 – PERFORMANCE APPRAISAL, [illegible] PERFORMANCE STANDARD.
O – OUTSTANDING E – EXCELLENT S – FULLY SATISFACTORY M – MINIMALLY SUCCESSFUL U – UNSATISFACTORY

PERFORMANCE APPRAISAL: O E S M U

SUBELEMENT c: INITIATIVE

PERFORMANCE STANDARD:

Recognize major policy questions requiring Commission decision and initiate action to bring these to Commission attention. Use initiative to develop solutions to problems before they become critical.

PERFORMANCE APPRAISAL:

Shows outstanding initiative in recognizing and solving problems. Takes a results oriented and proactive approach to problem-solving. Very effective in recognizing major policy questions requiring Commission decision and keeping the Commission informed. Takes the initiative to identify certain areas before they become problems. If problems exist, rapidly develops appropriate solutions to resolve or otherwise mitigate problems.

Performance Rating: X

CRITICAL ELEMENT PERFORMANCE RATING: X

PERFORMANCE RATING (To be completed for each critical element and subelement)

PAGE 4

NRC FORM 361
(5-84)
NRCM 4152

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES)
PERFORMANCE PLANNING AND APPRAISAL

SENIOR EXECUTIVE – TYPED NAME (Last, first, middle initial)
STELLO, VICTOR, JR.

SUPERVISING EXECUTIVE. At the beginning of the rating period, **STEPS 1, 2** and **3** are completed. At the end of the rating period complete **STEP 4.**

STEP 4 -- PERFORMANCE APPRAISAL/EVALUATION *(Continued).* **SUPERVISING EXECUTIVE:** Place Summary rating *(Mandatory)*, any recommended pay level change, reassignment or removal action in **STEP 4 AND 6 CONTINUED**, on the Summary Page, after **STEP 5**, sign and date.

SUPERVISING EXECUTIVE's COMMENTS *(Brief narrative summary)* May document areas for future emphasis or training and development needs. Begin performance planning for the next rating period, using a new NRC Form 361.

Victor Stello is an outstanding administrator and an effective leader. He keeps abreast of all aspects of the staff's activities. He shows outstanding initiative and judgment in identifying and resolving problems. His talents as a manager and his responsiveness to the Commission's needs bring credit to the entire NRC.

Victor Stello is an exceptionally outstanding public servant - certainly one of the finest in our country!

STEP 4A – If Reviewing Official used in office, forward to that official **(STEP 5)**. **STEP 4B** – If Reviewing Official not used, proceed to **STEP 6**.

STEP 5 – REVIEWING OFFICIAL *(Optional by Office)* Reviewer cannot change appraisal or rating. Indicate only if review has been made. Complete and return within three workdays. ☐ YES

STEP 6 – SUPERVISING EXECUTIVE: Discuss appraisal with Senior Executive. Sign and date **STEP 4 AND 6 CONTINUED** on the Summary Page. Note: If there is another supervisory level between Supervising Executive and Ranking Official, send an information copy to that official.

STEP 7 – SENIOR EXECUTIVE: I have reviewed and discussed my performance appraisal with my supervisor. My signature does not imply that I agree with the appraisal or rating. *(Complete this step and return the appraisal to your supervisor within five workdays.)*

SENIOR EXECUTIVE'S SIGNATURE *(Mandatory)* Victor Stello   DATE 7/14/8

INDEPENDENT REVIEW
☐ REQUESTED
☒ NOT REQUESTED

SENIOR EXECUTIVE'S COMMENTS *(Optional. Use additional page if necessary)*

STEP 8 – SUPERVISING EXECUTIVE On receipt of appraisal, supply one copy to the Senior Executive and

STEP 8A – If an Independent Review is requested, send the appraisal to the Performance Review Board
STEP 8B – If an Independent Review is not requested, send the original of the appraisal to the Ranking Official

STEP 9 – PERFORMANCE REVIEW BOARD Appoint an Independent Executive Reviewer, if requested by the Senior Executive, within two workdays. *(Mandatory, if requested. Insert name, position title and organization below.)*

INDEPENDENT EXECUTIVE APPOINTED	POSITION TITLE	ORGANIZATION

STEP 10 – INDEPENDENT EXECUTIVE REVIEWER: Conduct review within five workdays of assignment. *(Mandatory)*. Indicate below whether you agree or disagree with the supervisor's recommended rating and why *(Use additional pages if necessary)*. Place recommended summary rating, any recommended pay level change, reassignment or removal action in **STEP 10 CONTINUED**, on the Summary Page.

NRC FORM 351
(5-80)
NRCM 4152

SENIOR EXECUTIVE SERVICE (SES)
PERFORMANCE PLANNING AND APPRAISAL
SUMMARY PAGE

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE – TYPED NAME (Last, first, middle initial)
STELLO, VICTOR, JR.

INSTRUCTIONS: [illegible] page 1.

STEP	SUMMARY RATING					PAY LEVEL		RANKING		AWARD RECOMMENDED			PLACEMENT		SIGNATURE	DATE
	O	E	S	M	U	FROM ES	TO ES	TOP 5%	7.5%	NO	YES	AMOUNT	REASSIGNMENT	REMOVAL		
4 AND 8 CONTINUED	X												No	No	SUPERVISING EXECUTIVE N. J. Palladino	6-18-86
10 CONTINUED															INDEPENDENT EXECUTIVE REVIEWER (if Requested)	
11											X		No	No	RANKING OFFICIAL N J Palladino	6-18-86
12	X										X	9,500			PERFORMANCE REVIEW BOARD	9-5-86
13	X														RATING OFFICIAL APPOINTING AUTHORITY (Final Decision) Lando W. Zech Jr.	9-19-86
14											x	11,250			AWARDING AUTHORITY (Final Decision) Lando W. Zech Jr	9-19-86

PERFORMANCE REVIEW BOARD COMMENTS (Optional)

J. Murray	W. Kerr
G. Arlotto	R. Martin
R. Bernero	D. Mausshardt
J. Fitzgerald	R. Scroggins
E. Jordan	[redacted]
	R. Vollmer

RATING OFFICIAL COMMENTS (Optional)

AWARDING AUTHORITY COMMENTS (Optional)

The Awarding Authorities (Chairman and Executive Director for Operations) revised the dollar amounts of bonuses, subsequent to PRB and PRB Panel recommendations.

PERFORMANCE RATING DEFINITIONS

OUTSTANDING (O)
[illegible]

EXCELLENT (E)
[illegible]

FULLY SUCCESSFUL (S)
[illegible]

MINIMALLY SATISFACTORY (M)
[illegible]

UNSATISFACTORY (U)
[illegible]

APPRAISAL SUMMARY: PERFORMANCE RATINGS

EXECUTIVE'S NAME: STELLO, VICTOR

CRITICAL ELEMENTS AND SUBELEMENTS	PERFORMANCE RATING	
	SUBELEMENT	CRITICAL ELEMENT
A. PROGRAM GOALS		
1. Direct and Manage Agency Programs		O
a. Direct staff in achieving PPG and EDO goals	O	
b. Direct FY 86 budget implementation	O	
B. MANAGEMENT EFFECTIVENESS GOALS		O
a. Planning and Organizing	O	
b. Timeliness of Work	O	
c. Selection and Development of Staff	E	
d. Appraising SES and Non-SES Staff	O	
e. Resource Utilization	O	
f. Equal Employment & Affirmative Action Efforts	O	
C. INDIVIDUAL PERFORMANCE		O
a. Problem Solving	O	
b. Interpersonal Skills Including Communications	E	
c. Initiative	O	

SUMMATION: A. O
B. O
C. O
SUMMARY RATING: O

SUPERVISING EXECUTIVE'S BRIEF NARRATIVE SUMMARY (FROM PAGE 4 OF FORM 351):

Mr. Stello has been one of the most effective managers of the agency. In this new assignment as EDO, he shows every indication of continuing to be an effective leader and an outstanding administrator. His responsiveness to the Chairman is very much appreciated.

PAGE 1

NRC FORM 381
(5-81)
NRCM 4112

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES)
PERFORMANCE PLANNING AND APPRAISAL

SENIOR EXECUTIVE – TYPED NAME (Last, first, middle initial) STELLO, VICTOR, JR.		TITLE Acting Executive Director for Operations	
ORGANIZATION Office of the Executive Director for Operations		SIGNATURE Victor Stello	DATE 1/6/86
RATING PERIOD FROM 1/6/86	TO 6/30/86	CAREER APPOINTEE ☒ YES ☐ NO	ES LEVEL ES 6

SUPERVISING EXECUTIVE – TYPED NAME, TITLE, AND ORGANIZATION Nunzio J. Palladino, Chairman	SIGNATURE X Nunzio J Palladino	DATE 1/27/86

STEP 3 – REVIEW/APPROVAL OF PERFORMANCE PLAN (To be completed AFTER STEPS 1 AND 2 below. Mandatory)

REVIEWING OFFICIAL – TYPED NAME, TITLE, AND ORGANIZATION	SIGNATURE	DATE

PLANNING INSTRUCTIONS: At the beginning of the rating period the Senior Executive and Supervising Executive must jointly develop
STEP 1 – CRITICAL ELEMENTS AND SUBELEMENTS; and identify the associated
STEP 2 – PERFORMANCE STANDARDS (EXPECTED RESULTS), allowing space for
STEP 4 – PERFORMANCE APPRAISAL, a narrative justification of rating level, to follow immediately after each PERFORMANCE STANDARD. STEP 4 To be provided by the Supervising Executive at the end of the rating period.
O – OUTSTANDING E – EXCELLENT S – FULLY SUCCESSFUL M – MINIMALLY SATISFACTORY U – UNSATISFACTORY

PERFORMANCE APPRAISAL: O E S M U

PROGRAM GOAL(S): At least one is mandatory, up to three are permitted.
1. SPECIFIC PROGRAM GOAL CRITICAL ELEMENT (Number 1, 2 and 3)
PERFORMANCE STANDARD (EXPECTED RESULTS), allow space for PERFORMANCE APPRAISAL to be done at end of rating period.
a. SUBELEMENTS (based on assignments, there may be more than one SUBELEMENT (letter sequentially, a, b, c, etc.)
PERFORMANCE STANDARD (EXPECTED RESULT) to follow each SUBELEMENT. ALLOW SPACE for PERFORMANCE APPRAISAL, after each STANDARD, to be done at the end of the rating period.

PROGRAM GOAL CRITICAL ELEMENT:

Direct and manage the Agency's licensing, regulatory, and administrative programs under the general supervision of the Chairman in accordance with policy directives of the Commission.

SUBELEMENT a.

Direct the staff effort toward achievement of the goals of the Commission PPG and EDO Program Guidance.

PERFORMANCE STANDARD:

The aims of the PPG are translated into effective staff action. Proper judgment is applied in balancing priorities when conflicts arise.

PERFORMANCE APPRAISAL:

Management of the PPG and Five Year Plan is outstanding. Works hard and with excellent effect to overcome obstacles.

	O	E	S	M	U
Performance Rating:	X				

(Use continuation page, NRC Form 381A, as required. Number pages 1A, 1B, 1C, etc.)

PERFORMANCE RATING (To be completed for each critical element and subelements)

PAGE 1a

NRC FORM 351A
[illegible]
NRCM 4152

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES)
PERFORMANCE PLANNING AND APPRAISAL
(Continuation)

SENIOR EXECUTIVE – TYPED NAME (Last, first, middle initial)
STELLO, VICTOR, JR.

PLANNING INSTRUCTIONS: At the beginning of the rating period the Senior Executive and Supervisory Executive must jointly develop:
STEP 1 – CRITICAL ELEMENTS AND SUBELEMENTS, and identify the [illegible]
STEP 2 – PERFORMANCE STANDARDS (EXPECTED RESULTS), allowing space for the Supervisory Executive to provide, at end of rating period,
STEP 4 – PERFORMANCE APPRAISAL, a narrative justification of selection level, to follow immediately after each PERFORMANCE STANDARD.
O – OUTSTANDING E – EXCELLENT S – FULLY SATISFACTORY M – MINIMALLY SUCCESSFUL U – UNSATISFACTORY

PERFORMANCE APPRAISAL: O E S M U

SUBELEMENT b.

Direct and coordinate implementation of the FY 1986 budget to accommodate Agency requirements.

PERFORMANCE STANDARD:

Implementation of the budget provides for efficient and effective utilization of resources. Timely and balanced adjustments are made to reflect changing priorities.

PERFORMANCE APPRAISAL:

Very effective in adjusting changes in resources available for essential programs. Balances attention among technical and administrative issues as needed.

Performance Rating: X

SUBELEMENT c.

Continue development of the FY 1987 and FY 1988 budgets.

PERFORMANCE STANDARD:

The budget proposals reflect the relative priority of Agency's program goals.

PERFORMANCE APPRAISAL:

Budget proposals are well prepared and effectively presented and reflect the agency's program goals. Is working hard to integrate budget and planning.

Performance Rating: X

OVERALL CRITICAL ELEMENT PERFORMANCE RATING: X

PERFORMANCE RATING (To be completed for each critical element and subelement)

PAGE 2

NRC FORM 351
(5-84)
NRCM 4152

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES)
PERFORMANCE PLANNING AND APPRAISAL

SENIOR EXECUTIVE – TYPED NAME (Last, first, middle initial)
STELLO, VICTOR, JR.

PLANNING INSTRUCTIONS: At the beginning of the rating period the Senior Executive and Supervising Executive must jointly develop
STEP 1 – CRITICAL ELEMENTS AND SUBELEMENTS, and identify the associated
STEP 2 – PERFORMANCE STANDARDS (EXPECTED RESULTS), allowing space for
STEP 4 – PERFORMANCE APPRAISAL, a narrative justification of rating level, to follow immediately after each PERFORMANCE STANDARD
O – OUTSTANDING E – EXCELLENT S – FULLY SUCCESSFUL M – MINIMALLY SATISFACTORY U – UNSATISFACTORY

PERFORMANCE APPRAISAL: O E S M U

MANAGEMENT EFFECTIVENESS GOAL (Coverage of SUBELEMENTS a through f mandatory, additional subelements are optional)
a. PLANNING AND ORGANIZING
PERFORMANCE STANDARD (EXPECTED RESULT) ALLOW
SPACE for PERFORMANCE APPRAISAL to be done at end of rating period
b. TIMELINESS OF WORK OR PRODUCT
PERFORMANCE STANDARD (EXPECTED RESULT) ALLOW
SPACE for PERFORMANCE APPRAISAL
c. SELECTION AND DEVELOPMENT OF STAFF
PERFORMANCE STANDARD (EXPECTED RESULT) ALLOW
SPACE for PERFORMANCE APPRAISAL
d. APPRAISING SES AND NON-SES STAFF (INCLUDING ALL PHASES OF THE PERFORMANCE APPRAISAL PROCESS)
Continue in same manner as a, b, and c above
e. RESOURCE UTILIZATION
Continue in same manner as a, b, and c above
f. EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION EFFORTS (Relating to all groups protected by antidiscrimination laws and covering all employment practices)
Continue in same manner as a, b, and c above
g. ADDITIONAL SUBELEMENTS (if appropriate)
Continue in same manner as a, b, and c above

SUBELEMENT a: PLANNING AND ORGANIZING

PERFORMANCE STANDARD:

Effectively organize the staff's work. Recommend to the Commission appropriate planning and program goals.

PERFORMANCE APPRAISAL:

Highly effective in dealing with a wide range of technical issues, and with administrative issues that can be just as difficult to resolve. Excellent leadership skills; very effective in organizing to meet commitments.

Performance Rating: X (O)

SUBELEMENT b: TIMELINESS AND QUALITY OF WORK OR PRODUCT

PERFORMANCE STANDARD:

Work should be implemented in a sufficiently timely manner to achieve objectives. Meet Commission-established deadlines. When deadlines cannot be met with due regard to quality of work, prompt notice should be given to the Commission in order to allow adjustments.

PERFORMANCE APPRAISAL:

Is very attentive to due dates and other time commitments; slippages seem to have decreased recently. Very good at monitoring status to avoid delay.

Performance Rating: X (O)

(Use continuation page, NRC Form 351A, as required. Number 3A, 3B, 3C, etc.) PERFORMANCE RATING (To be completed for each critical element and subelement)

PAGE 2a

NRC FORM 351A
U.S. NUCLEAR REGULATORY COMMISSION
SENIOR EXECUTIVE SERVICE (SES)
PERFORMANCE PLANNING AND APPRAISAL
(Continuation)

SENIOR EXECUTIVE – TYPED NAME (Last, first, middle initial)
STELLO, VICTOR, JR.

PLANNING INSTRUCTIONS: [illegible]
STEP 1 – CRITICAL ELEMENTS AND SUBELEMENTS, [illegible]
STEP 2 – PERFORMANCE STANDARDS (EXPECTED RESULTS), [illegible]
STEP 4 – PERFORMANCE APPRAISAL, [illegible] PERFORMANCE STANDARD.
O – OUTSTANDING E – EXCELLENT S – FULLY SATISFACTORY M – MINIMALLY SUCCESSFUL U – UNSATISFACTORY

PERFORMANCE APPRAISAL: O E S M U

SUBELEMENT c: SELECTION AND DEVELOPMENT OF STAFF

PERFORMANCE STANDARD:

Develop guidance for staff so that vacancies are filled expeditiously with qualified personnel to insure full utilization of agency's FTE allocation.

PERFORMANCE APPRAISAL:

Initial appointments have been excellent choices. I am confident he will develop skill at selecting the best executives and at "selling" them to top management when appropriate.

Performance Rating:	O	E	S	M	U
		X			

SUBELEMENT d: APPRAISING SES AND NON-SES STAFF

Appraising SES and non-SES staff, including all phases of the performance appraisal process.

PERFORMANCE STANDARD:

Performance plans are issued in a timely fashion. Appraisals and reviews are conducted in a fair and objective manner. The conduct of performance appraisal functions is generally in accordance with agency procedures and time tables.

PERFORMANCE APPRAISAL:

Performance plans are timely and in accord with agency procedures.

Performance Rating:	O	E	S	M	U
	X				

PERFORMANCE RATING (To be completed for each critical element and subelement)

PAGE 2b

NRC FORM 381A
(5-84)
NRCM 4152

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES)
PERFORMANCE PLANNING AND APPRAISAL
(Continuation)

SENIOR EXECUTIVE – TYPED NAME (Last, first, middle initial)

STELLO, VICTOR, JR.

PLANNING INSTRUCTIONS: At the beginning of the rating period the Senior Executive and Supervisory Executive must jointly develop:
STEP 1 – CRITICAL ELEMENTS AND SUBELEMENTS; and identify the [illegible]
STEP 2 – PERFORMANCE STANDARDS (EXPECTED RESULTS), allowing space for the Supervising Executive to provide, at end of rating period,
STEP 4 – PERFORMANCE APPRAISAL, a narrative justification of [illegible] level, to follow immediately after each PERFORMANCE STANDARD.
O – OUTSTANDING E – EXCELLENT S – FULLY SATISFACTORY M – MINIMALLY SUCCESSFUL U – UNSATISFACTORY

PERFORMANCE APPRAISAL
O E S M U

SUBELEMENT e: RESOURCE UTILIZATION

PERFORMANCE STANDARD:

Insure that personnel and budgetary allocations are efficiently tailored to the changing needs of the agency.

PERFORMANCE APPRAISAL:

Is very effective and very concerned in achieving efficient use of available resources. This ability is bound to become more important in facing future budget cuts.

Performance Rating: X

SUBELEMENT f: EQUAL EMPLOYMENT AND AFFIRMATIVE ACTION EFFORTS

PERFORMANCE STANDARD:

Identify problems in meeting EEO goals specified in Commission-approved EEO plan and take appropriate action to eliminate problems.

PERFORMANCE APPRAISAL:

Is personally committed to agency programs in this area. Participates in seminars and otherwise lends his direct support to seeing that goals are met.

Performance Rating: X

OVERALL CRITICAL ELEMENT PERFORMANCE RATING: X

PERFORMANCE RATING (To be completed for each critical element and subelement)

NRC FORM 381
(5-80)
NRCM 4102

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES) PERFORMANCE PLANNING AND APPRAISAL

SENIOR EXECUTIVE – TYPED NAME (Last, first, middle initial)

STELLO, VICTOR, JR.

PLANNING INSTRUCTIONS: At the beginning of the rating period the Senior Executive and Supervising Executive must jointly develop [illegible]
STEP 1 – CRITICAL ELEMENTS AND SUBELEMENTS, and identify the [illegible]
STEP 2 – PERFORMANCE STANDARDS (EXPECTED RESULTS), allowing space for
STEP 4 – PERFORMANCE APPRAISAL, a narrative [illegible] to follow [illegible] PERFORMANCE STANDARD.
O – OUTSTANDING E – EXCELLENT S – FULLY SUCCESSFUL M – MINIMALLY SATISFACTORY U – UNSATISFACTORY

PERFORMANCE APPRAISAL

INDIVIDUAL PERFORMANCE (Coverage of SUBELEMENTS a and b is mandatory, additional SUBELEMENTS are optional)
a. PROBLEM SOLVING
PERFORMANCE STANDARD (EXPECTED RESULT) ALLOW
SPACE for PERFORMANCE APPRAISAL to be done at the end of the rating period
b. INTERPERSONAL SKILLS, INCLUDING COMMUNICATIONS
PERFORMANCE STANDARD (EXPECTED) ALLOW
SPACE for PERFORMANCE APPRAISAL to be done at the end of the rating period
c. ADDITIONAL SUBELEMENTS (if appropriate)
Continue in same manner as a and b above

SUBELEMENT a: PROBLEM SOLVING

PERFORMANCE STANDARD:

Give personal attention to problems where solutions involve interoffice or interagency cooperation.

PERFORMANCE APPRAISAL:

Very hard-working, strongly motivated individual. Does not shirk from even the hardest decisions. Quickly sifts through the facts to develop sound conclusions and clear, effective recommendations.

Performance Rating:

O	E	S	M	U
X				

SUBELEMENT b: INTERPERSONAL SKILLS INCLUDING COMMUNICATIONS

PERFORMANCE STANDARD:

Interpersonal relationships with office directors should provide strong management leadership. Maintain open door policy with staff for counsel, discussion or hearing.

PERFORMANCE APPRAISAL:

Highly regarded by his team of agency executives. Very effective speaker; presents cases very well. Could develop a knack for temporizing in some circumstances. Interacts very well with his advisors.

Performance Rating:

O	E	S	M	U
	X			

(Use continuation page NRC Form 381A as required. Number pages 3A, 3B, 3C, etc.) PERFORMANCE RATING To be completed for each critical element and subelement

NRC FORM 351A [illegible]

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES)
PERFORMANCE PLANNING AND APPRAISAL
(Continuation)

SENIOR EXECUTIVE – TYPED NAME [illegible]

STELLO, VICTOR, JR.

PLANNING INSTRUCTIONS: [illegible]
STEP 1 – CRITICAL ELEMENTS AND SUBELEMENTS; [illegible]
STEP 2 – PERFORMANCE STANDARDS (EXPECTED RESULTS), [illegible]
STEP 4 – PERFORMANCE APPRAISAL, [illegible] PERFORMANCE STANDARD.
O – OUTSTANDING E – EXCELLENT S – FULLY SATISFACTORY M – MINIMALLY SUCCESSFUL U – UNSATISFACTORY

PERFORMANCE APPRAISAL

SUBELEMENT c: INITIATIVE

PERFORMANCE STANDARD:

Recognize major policy questions requiring Commission decision and initiate action to bring these to Commission attention. Use initiative to develop solutions to problems before they become critical.

PERFORMANCE APPRAISAL:

A real "go-getter" in every sense. Hard driving and a self-starter. This is most effective in getting attention to the points that need attention. Very effective in keeping the Commission informed.

	O	E	S	M	U
Performance Rating:	X				
OVERALL CRITICAL ELEMENT PERFORMANCE RATING:	X				

PERFORMANCE RATING (To be completed for each critical element and subelement)

NRC FORM 351
(6-84)
NRCM 4132

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES) PERFORMANCE PLANNING AND APPRAISAL

SENIOR EXECUTIVE – TYPED NAME (Last, first, middle initial)

STELLO, VICTOR, JR.

SUPERVISING EXECUTIVE: At the beginning of the rating period, STEPS 1, 2 and 3 are completed. At the end of the rating period complete STEP 4.

STEP 4 -- PERFORMANCE APPRAISAL/EVALUATION (Continued). **SUPERVISING EXECUTIVE:** Place Summary rating (Mandatory), any recommended pay level change, reassignment or removal action in STEP 4 AND 6 CONTINUED, on the Summary Page, after STEP 6, sign and date.

SUPERVISING EXECUTIVE's COMMENTS (Brief narrative summary) May document areas for future emphasis or training and development needs. Begin performance planning for the next rating period, using a new NRC Form 351.

Mr. Stello has been one of the most effective managers of the agency. In this new assignment as EDO, he shows every indication of continuing to be an effective leader and an outstanding administrator. His responsiveness to the Chairman is very much appreciated.

STEP 4A – If Reviewing Official used in office, forward to that official (STEP 5). **STEP 4B** – If Reviewing Official not used, proceed to STEP 6.

STEP 5 – REVIEWING OFFICIAL (Optional by Office) Reviewer cannot change appraisal or rating. Indicate only if review has been made. Complete and return within three workdays. ☐ YES

STEP 6 – SUPERVISING EXECUTIVE: Discuss appraisal with Senior Executive. Sign and date STEP 4 AND 6 CONTINUED on the Summary Page. Note: If there is another supervisory level between Supervising Executive and Ranking Official, send an information copy to that official.

STEP 7 – SENIOR EXECUTIVE: I have reviewed and discussed my performance appraisal with my supervisor. My signature does not imply that I agree with the appraisal or rating. (Complete this step and return this appraisal to your supervisor within five workdays.)

X Victor Stello
SENIOR EXECUTIVE'S SIGNATURE (Mandatory)

DATE 6/20/86

INDEPENDENT REVIEW
☐ REQUESTED
☒ NOT REQUESTED

SENIOR EXECUTIVE'S COMMENTS (Optional) Use additional page if necessary)

STEP 8 – SUPERVISING EXECUTIVE On receipt of appraisal, supply one copy to the Senior Executive and

STEP 8A – If an Independent Review is requested, send the appraisal to the Performance Review Board
STEP 8B – If an Independent Review is not requested, send the original of the appraisal to the Ranking Official

STEP 9 – PERFORMANCE REVIEW BOARD Appoint an Independent Executive Reviewer, if requested by the Senior Executive, within two workdays. (Mandatory, if requested. Insert name, position title and organization below.)

INDEPENDENT EXECUTIVE APPOINTED	POSITION TITLE	ORGANIZATION

STEP 10 – INDEPENDENT EXECUTIVE REVIEWER: Conduct review within five workdays of assignment. (Mandatory). Indicate below whether you agree or disagree with the supervisor's recommended rating and why (Use additional pages if necessary). Place recommended summary rating, any recommended pay level change, reassignment or removal action in STEP 10 CONTINUED, on the Summary Page.

NRC FORM 381
NRCM 4162

SENIOR EXECUTIVE SERVICE (SES) PERFORMANCE PLANNING AND APPRAISAL SUMMARY PAGE

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE — TYPED NAME (Last, first, middle initial)
STELLO, VICTOR, JR.

INSTRUCTIONS: [illegible]

STEP	SUMMARY RATING O	E	S	M	U	PAY LEVEL FROM	TO	RANKING TOP 5%		AWARD RECOMMENDED NO	YES	AMOUNT	PLACEMENT		SIGNATURE	DATE
4 AND 8 CONTINUED	X														William J. Dircks, EDO	7/22/85
10 CONTINUED																
11								✓			✓				William J. Dircks, EDO	7/22/85
12	X										X	9,500				SEP 06 1985
13	X														~~William J. Dircks, EDO~~	SEP 09 1985
14											X	9,500			William J. Dircks, EDO	

PERFORMANCE REVIEW BOARD COMMENTS (Optional)

P. Norry	W. Kerr
R. Bernero	M. Malsch
R. Cunningham	J. Murray
J. Davis	[redacted]
H. Denton	D. Ross
J. Keppler	J. Taylor

RATING OFFICIAL COMMENTS (Optional)

AWARDING AUTHORITY COMMENTS (Optional)

PERFORMANCE RATING DEFINITIONS

OUTSTANDING (O)

EXCELLENT (E)

FULLY SUCCESSFUL (S)

MINIMALLY SATISFACTORY (M)

UNSATISFACTORY (U)

PAGE 1

NRC FORM 381 (5-84) NRCM 4152 U.S. NUCLEAR REGULATORY COMMISSION **SENIOR EXECUTIVE SERVICE (SES) PERFORMANCE PLANNING AND APPRAISAL**	SENIOR EXECUTIVE – TYPED NAME (Last, first, middle initial) STELLO, VICTOR, JR.	TITLE Deputy Executive Director		
	ORGANIZATION ROGR	SIGNATURE	DATE 8/1/84	
	RATING PERIOD FROM 6/30/84	TO 7/1/85	CAREER APPOINTEE ☒ YES ☐ NO	ES LEVEL ES 6
SUPERVISING EXECUTIVE – TYPED NAME, TITLE, AND ORGANIZATION William J. Dircks, EDO	SIGNATURE		DATE 8/1/84	
STEP 3 – REVIEW/APPROVAL OF PERFORMANCE PLAN (To be completed AFTER STEPS 1 AND 2 below. Mandatory)				
REVIEWING OFFICIAL – TYPED NAME, TITLE, AND ORGANIZATION Nunzio J. Palladino, Chairman	SIGNATURE x Nunzio J Palladino		DATE x 8/13/84	

PLANNING INSTRUCTIONS. At the beginning of the rating period the Senior Executive and Supervising Executive must jointly develop
STEP 1 – CRITICAL ELEMENTS AND SUBELEMENTS; and identify the associated
STEP 2 – PERFORMANCE STANDARDS (EXPECTED RESULTS), allowing space for
STEP 4 – PERFORMANCE APPRAISAL, a narrative justification of rating level, to follow immediately after each PERFORMANCE STANDARD. STEP 4 To be provided by the Supervising Executive at the end of the rating period.
O – OUTSTANDING E – EXCELLENT S – FULLY SUCCESSFUL M – MINIMALLY SATISFACTORY U – UNSATISFACTORY

PERFORMANCE APPRAISAL

PROGRAM GOAL(S) At least one is mandatory, up to three are permitted.
1. SPECIFIC PROGRAM GOAL CRITICAL ELEMENT (Number 1, 2 and 3)
PERFORMANCE STANDARD (EXPECTED RESULTS), allow space for PERFORMANCE APPRAISAL to be done at end of rating period.
a. SUBELEMENTS (based on assignments, there may be more than one SUBELEMENT letter sequentially, a, b, c, etc.)
PERFORMANCE STANDARD (EXPECTED RESULT) to follow each SUBELEMENT. ALLOW SPACE for PERFORMANCE APPRAISAL, after each STANDARD, to be done at the end of the rating period.

Responsibilities of DEDROGR Office

Continue to implement the guidance from the Commission outlined in the October 8, 1981 memorandum from Chairman Palladino, to the EDO establishing the Office of the Deputy EDO for Regional Operations and Generic Requirements (DEDROGR).

a. Controlling Generic Requirements

Serve as Chairman of the Committee to Review Generic Requirements according to the procedures in the Charter approved by the Commission on June 16, 1982. Take actions to ensure that the program offices and regional offices effectively control generic requirements according to Commission policy.

PERFORMANCE APPRAISAL

The CRGR has been one of the most important new initiatives of the agency. It has brought about a new formal and disciplined system of decision making. Mr. Stello has managed this operation in an outstanding manner. The office's reputation is well established and highly respected both inside the agency's management and outside the agency including Congressional reports.

	O	E	S	M	U
Performance Rating:	X				

(Use continuation page, NRC Form 381A, as required. Number pages 1A, 1B, 1C, etc.) PERFORMANCE RATING (To be completed for each critical element and subelements)

NRC FORM 351A
(6-81)
NRCM 4152

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES)
PERFORMANCE PLANNING AND APPRAISAL
(Continuation)

SENIOR EXECUTIVE – TYPED NAME (Last, first, middle initial)

STELLO, JR., Victor

PLANNING INSTRUCTIONS: At the beginning of the rating period the Senior Executive and Supervisory Executive must jointly develop
STEP 1 – CRITICAL ELEMENTS AND SUBELEMENTS; and identify the [illegible]
STEP 2 – PERFORMANCE STANDARDS (EXPECTED RESULTS), allowing space for the Supervisory Executive to provide, at end of rating period,
STEP 4 – PERFORMANCE APPRAISAL, a narrative justification of selection level, to follow immediately after each PERFORMANCE STANDARD.
O – OUTSTANDING E – EXCELLENT S – FULLY SATISFACTORY M – MINIMALLY SUCCESSFUL U – UNSATISFACTORY

PERFORMANCE APPRAISAL

b. Reducing backlog of operating reactor licensing actions.

Oversee the operating reactor licensing activities of the program offices and regional offices to ensure that the licensing backlog continues to be reduced in an expeditious manner.

PERFORMANCE APPRAISAL

The agency backlog problem remains a difficult issue. New initiatives have resulted in some progress. However, legal procedural impediments keep progress at a slow pace. Given these difficulties, Mr. Stello's performance is rated excellent.

	O	E	S	M	U
Performance Rating:		X			

c. Regional Operations

Supervise NRC's regional operations and resolve issues raised to the EDO's office.

PERFORMANCE APPRAISAL

The interaction between Regional Offices and Headquarters has constantly gotten better. This interaction is extremely complex and covers many outstanding and technical program areas. Mr. Stello's work has assured that the program has progressed in an outstanding manner.

	O	E	S	M	U
Performance Rating:	X				
CRITICAL ELEMENT PERFORMANCE RATING:	X				

PERFORMANCE RATING (To be completed for each critical element and subelement)

PAGE 2

NRC FORM 301
U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES)
PERFORMANCE PLANNING AND APPRAISAL

SENIOR EXECUTIVE – TYPED NAME (Last, first, middle initial): STELLO, JR., Victor

PLANNING INSTRUCTIONS: [illegible]
STEP 1 – CRITICAL ELEMENTS AND SUBELEMENTS, [illegible]
STEP 2 – PERFORMANCE STANDARDS (EXPECTED RESULTS), [illegible]
STEP 4 – PERFORMANCE APPRAISAL, [illegible] PERFORMANCE STANDARD
O – OUTSTANDING E – EXCELLENT S – FULLY SUCCESSFUL M – MINIMALLY SATISFACTORY U – UNSATISFACTORY

PERFORMANCE APPRAISAL: O | E | S | M | U

MANAGEMENT EFFECTIVENESS GOAL (Coverage of SUBELEMENTS a through f mandatory, additional subelements are optional)

a. PLANNING AND ORGANIZING
PERFORMANCE STANDARD (EXPECTED RESULT) ALLOW
SPACE for PERFORMANCE APPRAISAL to be done at end of rating period
b. TIMELINESS OF WORK OR PRODUCT
PERFORMANCE STANDARD (EXPECTED RESULT) ALLOW
SPACE for PERFORMANCE APPRAISAL
c. SELECTION AND DEVELOPMENT OF STAFF
PERFORMANCE STANDARD (EXPECTED RESULT) ALLOW
SPACE for PERFORMANCE APPRAISAL
d. APPRAISING SES AND NON-SES STAFF (INCLUDING ALL PHASES OF THE PERFORMANCE APPRAISAL PROCESS)
Continue in same manner as a, b, and c above.
e. RESOURCE UTILIZATION
Continue in same manner as a, b, and c above.
f. EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION EFFORTS (Relating to all groups protected by antidiscrimination laws and covering all employment practices)
Continue in same manner as a, b, and c above.
g. ADDITIONAL SUBELEMENTS (if appropriate)
Continue in same manner as a, b, and c above.

a. Planning and Organizing (mandatory)

Careful, effective planner anticipates and takes action to solve problems. Is flexible and able to adjust priorities. Searches out facts and arrives at sound solutions. Flexible and open to new ideas.

PERFORMANCE APPRAISAL

Mr. Stello's operation has a constant flow of difficult and complex issues. Under his leadership his office is prepared for almost all the issues that I can remember coming before it. Mr. Stello can be relied on to adjust his priorities, take on problems and new ideas, and make important recommendations to benefit the program.

Performance Rating: X

b. Timeliness of Work or Product (mandatory)

Effectively balances resources. Finished products are consistently submitted on time.

PERFORMANCE APPRAISAL

I am constantly amazed at how Mr. Stello is able to schedule his work and activity to produce quality products on schedule.

Performance Rating: X

c. Selection and Development of Staff (mandatory)

Selects staff carefully in a timely manner. Maintains an appropriate balance of employee expertise, experience and grade. Encourages employee development and training to improve staff proficiencies and capabilities.

PERFORMANCE APPRAISAL

The DEDROGR staff is looked upon as a collection of elite skills and talents. They were assembled by the direct choice of Mr. Stello.

Performance Rating: X

(Use continuation page, NRC Form 301A, as required. Number 2A, 2B, 2C, etc.) PERFORMANCE RATING (To be completed for each critical element and subelement)

PAGE 2a

NRC FORM 381A [illegible]
U.S. NUCLEAR REGULATORY COMMISSION
SENIOR EXECUTIVE SERVICE (SES)
PERFORMANCE PLANNING AND APPRAISAL
(Continuation)

SENIOR EXECUTIVE – TYPED NAME (Last, first, middle initial)
STELLO, JR., Victor

PLANNING INSTRUCTIONS. At the beginning of the rating period the Senior Executive and Supervisory Executive must jointly develop
STEP 1 – CRITICAL ELEMENTS AND SUBELEMENTS; and identify the mandatory
STEP 2 – PERFORMANCE STANDARDS (EXPECTED RESULTS), allowing space for the Supervising Executive to provide, at end of rating period,
STEP 4 – PERFORMANCE APPRAISAL, a narrative justification of selection level, to follow immediately after each PERFORMANCE STANDARD.
O – OUTSTANDING E – EXCELLENT S – FULLY SATISFACTORY M – MINIMALLY SUCCESSFUL U – UNSATISFACTORY

PERFORMANCE APPRAISAL: O E S M U

d. Resource Utilization (mandatory)

Uses minimum material with good results. Estimates control to ensure that manpower and dollars are accounted for and conserved. Develops and utilizes cost-effectiveness methods.

PERFORMANCE APPRAISAL

The principal mission of Mr. Stello's operation is to assure that regulations are carried out with strong emphasis on cost effectiveness. He does this job in an outstanding manner, not only in regulatory programs but in direct NRC operations.

	O	E	S	M	U
Performance Rating:	X				

e. Equal Employment and Affirmative Action Efforts (mandatory)

Supports the goals and objectives of NRC's EEO program and actively encourages the recruitment and hiring of minorities and women. Considers the rights and viewpoints of others without prejudice or bias. Encourages free and open discussions to foster better understanding of viewpoints and opinions. Evaluates employee's work quality and quantity and provides timely counsel to improve performance and morale.

PERFORMANCE APPRAISAL

Mr. Stello has worked diligently on behalf of increasing the status of minorities and women within the agency.

	O	E	S	M	U
Performance Rating:		X			

f. Commission Papers

Develop well-organized, clear and concise Commission papers. Focus attention on significant issues presented in papers. Include resource impacts of proposed actions and recommendations concerning whether resource needs should be accommodated by reprogramming or include in budget request.

Minimum number of papers returned for rewrite.

PERFORMANCE APPRAISAL

Mr. Stello produces papers of clarity and substance. But more importantly, I look to him as a quality control check for papers being prepared for my signature.

	O	E	S	M	U
Performance Rating:	X				

PERFORMANCE RATING (To be completed for each critical element and subelement)

NRC FORM 391A
[illegible]
NRCM 4152

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES)
PERFORMANCE PLANNING AND APPRAISAL
(Continuation)

SENIOR EXECUTIVE - TYPED NAME (Last, first, middle initial)

STELLO, JR., Victor

PLANNING INSTRUCTIONS: At the beginning of the rating period the Senior Executive and Supervisory Executive must jointly develop
STEP 1 – CRITICAL ELEMENTS AND SUBELEMENTS: and identify the [illegible]
STEP 2 – PERFORMANCE STANDARDS (EXPECTED RESULTS), allowing space for the Supervising Executive to provide, at end of rating period,
STEP 4 – PERFORMANCE APPRAISAL, a narrative [illegible] of [illegible] level, to follow immediately after each PERFORMANCE STANDARD.
O – OUTSTANDING E – EXCELLENT S – FULLY SATISFACTORY M – MINIMALLY SUCCESSFUL U – UNSATISFACTORY

PERFORMANCE APPRAISAL: O E S M U

g. Personnel Appraisals

Performance contracts with all subordinates, should be used as a management-tool. Rating for all supervised personnel should reflect a discriminating view toward rating performance.

Excellent and Outstanding ratings limited to those that excel; Marginal and Unsatisfactory rating utilized when required. Rating complete on schedule established by ADM.

PERFORMANCE APPRAISAL

Mr. Stello has an outstanding ability to evaluate performances. He has consistently provided evaluations that are objective and fair.

	O	E	S	M	U
Performance Rating:	X				
CRITICAL ELEMENT PERFORMANCE RATING:	X				

PERFORMANCE RATING (To be completed for each critical element and subelement)

PAGE 3

NRC FORM 351
[illegible]

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES)
PERFORMANCE PLANNING AND APPRAISAL

SENIOR EXECUTIVE – TYPED NAME (Last, first, middle initial)

STELLO, JR., Victor

[illegible]
STEP 1 – CRITICAL ELEMENTS AND SUBELEMENTS [illegible]
STEP 2 – PERFORMANCE STANDARDS (EXPECTED RESULTS) [illegible]
STEP 4 – PERFORMANCE APPRAISAL [illegible] PERFORMANCE STANDARD
O – OUTSTANDING E – EXCELLENT S – FULLY SUCCESSFUL M – MINIMALLY SATISFACTORY U – UNSATISFACTORY

PERFORMANCE APPRAISAL

INDIVIDUAL PERFORMANCE (Coverage of SUBELEMENTS a and b is mandatory, additional SUBELEMENTS are optional)
a. PROBLEM SOLVING
PERFORMANCE STANDARD (EXPECTED RESULT) ALLOW
SPACE for PERFORMANCE APPRAISAL to be done at the end of the rating period
b. INTERPERSONAL SKILLS, INCLUDING COMMUNICATIONS
PERFORMANCE STANDARD (EXPECTED) ALLOW
SPACE for PERFORMANCE APPRAISAL to be done at the end of the rating period
c. ADDITIONAL SUBELEMENTS (If appropriate)
Continue in same manner as a and b above

a. Problem Solving (mandatory)

Seeks out all available data. Consistently provides accurately and timely solutions. Accepts responsibility and learns from incorrect judgments and decisions. Provides effective solutions by clear and logical thinking.

PERFORMANCE APPRAISAL

Mr. Stello has an outstanding ability to solve complex problems. He expresses the problem in clear lucid terms. He is able to spot significant soft spots in arguments. He proposes solutions that are sound, practical and workable.

	O	E	S	M	U
Performance Rating:	X				

b. Interpersonal Skills Including Communications (mandatory)

Commands respect of subordinates, peers and supervisors. Fair and consistent in dealing with others. Consistently displays calm and controlled behavior.

PERFORMANCE APPRAISAL

Mr. Stello has a reputation as an outstanding manager, both within and outside the agency.

	O	E	S	M	U
Performance Rating:		X			

c. Task Force/Special Projects Assignments

Support of Significant Ad Hoc Assignments (if applicable)

Accepts responsibility of assigned tasks. Consistently displays initiative.

PERFORMANCE APPRAISAL

Mr. Stello can be relied on to accept any assignment no matter how taxing or troublesome. He carries out assignments with enthusiasm.

	O	E	S	M	U
Performance Rating:	X				
CRITICAL ELEMENT PERFORMANCE RATING:	X				

(Use continuation page, NRC Form 351A, as required. Number pages 3A, 3B, 3C, etc.) PERFORMANCE RATING (To be completed for each critical element and subelement)

BEST AVAILABLE COPY

NRC FORM 381
(5-84)
NRCM 4152

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES) PERFORMANCE PLANNING AND APPRAISAL

SENIOR EXECUTIVE – TYPED NAME *(Last, first, middle initial)*

STELLO, JR., Victor

SUPERVISING EXECUTIVE: At the beginning of the rating period, **STEPS 1, 2** and **3** are completed. At the end of the rating period complete **STEP 4.**

STEP 4 -- PERFORMANCE APPRAISAL/EVALUATION *(Continued)*. **SUPERVISING EXECUTIVE:** Place Summary rating *(Mandatory)*, any recommended pay level change, reassignment or removal action in **STEP 4 AND 6 CONTINUED**, on the Summary Page, after **STEP 6**, sign and date

SUPERVISING EXECUTIVE's COMMENTS *(Brief narrative summary)* May document areas for future emphasis or training and development needs. Begin performance planning for the next rating period, using a new NRC Form 381.

Mr. Stello is truly one of the outstanding managers in the agency. He has enthusiasm, intelligence and drive. He is articulate and is able to motivate staff and management to action.

STEP 4A – If Reviewing Official used in office, forward to that official **(STEP 5)**. **STEP 4B** – If Reviewing Official not used, proceed to **STEP 6.**

STEP 5 – REVIEWING OFFICIAL *(Optional by Office)* Reviewer cannot change appraisal or rating. Indicate only if review has been made. Complete and return within three workdays. ☐ YES

STEP 6 – SUPERVISING EXECUTIVE: Discuss appraisal with Senior Executive. Sign and date **STEP 4 AND 6 CONTINUED** on the Summary Page. Note: If there is another supervisory level between Supervising Executive and Ranking Official, send an information copy to that official.

STEP 7 – SENIOR EXECUTIVE: I have reviewed and discussed my performance appraisal with my supervisor. My signature does not imply that I agree with the appraisal or rating. *(Complete this step and return this appraisal to your supervisor within five workdays.)*

SENIOR EXECUTIVE'S SIGNATURE *(Mandatory)* Victor Stello Jr.

DATE 7/23/85

INDEPENDENT REVIEW
☐ REQUESTED
☑ NOT REQUESTED

SENIOR EXECUTIVE'S COMMENTS *(Optional. Use additional page if necessary)*

STEP 8 – SUPERVISING EXECUTIVE On receipt of appraisal, supply one copy to the Senior Executive and

STEP 8A – If an Independent Review is requested, send the appraisal to the Performance Review Board
STEP 8B – If an Independent Review is not requested, send the original of the appraisal to the Ranking Official

STEP 9 – PERFORMANCE REVIEW BOARD Appoint an Independent Executive Reviewer, if requested by the Senior Executive, within two workdays. *(Mandatory, if requested. Insert name, position title and organization below.)*

INDEPENDENT EXECUTIVE APPOINTED	POSITION TITLE	ORGANIZATION

STEP 10 – INDEPENDENT EXECUTIVE REVIEWER: Conduct review within five workdays of assignment. *(Mandatory)*. Indicate below whether you agree or disagree with the supervisor's recommended rating and why *(Use additional pages if necessary)*. Place recommended summary rating, any recommended pay level change, reassignment or removal action in **STEP 10 CONTINUED**, on the Summary Page.

Form 381

SENIOR EXECUTIVE SERVICE (SES)
PERFORMANCE PLANNING AND APPRAISAL
SUMMARY PAGE

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE—TYPED NAME (Last, first, middle initial)
STELLO, VICTOR JR.

INSTRUCTIONS: This page contains the final steps required for the SES performance appraisal process, and is used as the cover for the convenience of the final reviewers. Complete only the upper right portion of this page, and proceed to page 1.

STEP	SUMMARY RATING					PAY LEVEL		RANKING		AWARD RECOMMENDED			PLACEMENT		SIGNATURE	DATE
	O	E	S	M	U	FROM ES	TO ES	TOP 5%	7-35%	NO	YES	AMOUNT	REASSIGN	REMOVE		
4 AND 6 CONTINUED	X														SUPERVISING EXECUTIVE William J. Dircks, Executive Director for Operations	8/3/84
10 CONTINUED															INDEPENDENT EXECUTIVE REVIEWER (if requested)	
11								X			X				RANKING OFFICIAL William J. Dircks, Executive Director for Operations	8/3/84
12	X										X	$9,500			PERFORMANCE REVIEW BOARD Patricia G Norry	9-18-84
13															RATING OFFICIAL/APPOINTING AUTHORITY (final decision) William J. Dircks, Executive Director for Operations	1 84
14											X	$9,500			AWARDING AUTHORITY (final decision) William J. Dircks, Executive Director for Operations	

PERFORMANCE REVIEW BOARD COMMENTS (Optional)

P. Norry	G. Cunningham
J. Davis	J. Taylor
D. Ross	[redacted]
J. Keppler	E. Case
M. Malsch	

RATING OFFICIAL/APPOINTING AUTHORITY COMMENTS (Optional)

AWARDING AUTHORITY COMMENTS (Optional)

PERFORMANCE RATING DEFINITIONS

OUTSTANDING	For subelements and critical elements, job performance consistently exceeded the performance standards to an exceptional degree. For the summary rating, the Senior Executive performed at an overall outstanding level and has been rated outstanding in all critical elements and not less than excellent in all subelements.
EXCELLENT	Job performance frequently exceeded that expected in the performance standards to a noticeable degree. For the summary rating, the Senior Executive performed at an overall excellent level and has been rated at least excellent in all critical elements and not less than fully successful in all subelements.
FULLY SUCCESSFUL	Job performance consistently met that expected in the performance standards. For the summary rating, the Senior Executive performed at an overall fully successful level.
MINIMALLY SATISFACTORY	Job performance occasionally was less than that expected in the performance standards. For the summary rating, the Senior Executive performed either at an overall minimally satisfactory level so that performance can be described as marginal, or has been rated minimally satisfactory in at least one critical element of sufficient importance that it outweighs fully successful or better performance in other critical elements.
UNSATISFACTORY	Job performance was normally below that expected in the performance standards. For the summary rating, the Senior Executive performed at an unsatisfactory level, has been rated unsatisfactory in one or more critical elements, and overall performance must be rated unacceptable.

Form 361

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES) PERFORMANCE PLANNING AND APPRAISAL

SUPERVISING EXECUTIVE - TYPED NAME: William J. Dircks

TITLE: Executive Director for Operations

ORGANIZATION: Office of the EDO

SIGNATURE:

DATE: 12/18/83

SENIOR EXECUTIVE - TYPED NAME (Last, first, middle initial): STELLO, VICTOR JR

TITLE: Deputy Executive Director Regional Operations & Gen. Reqs

ORGANIZATION: Office of the Executive Director for Operations

SIGNATURE:

DATE: 10/17/83

RATING PERIOD FROM: 6/30/83 TO: 7/1/84

CAREER APPOINTEE: ☐ YES ☐ NO

SES LEVEL: ES-6

STEP 3 - REVIEW/APPROVAL OF PERFORMANCE PLAN (To be completed after Steps 1 and 2 below)

REVIEWING OFFICIAL - TYPED NAME: Nunzio J. Palladino

TITLE: Chairman

ORGANIZATION:

SIGNATURE:

DATE:

PLANNING INSTRUCTIONS: Senior and Supervisory Executives must jointly develop Critical Element/Subelements, and Standards before beginning of rating period. Appraisal to be completed at the end of the rating period.

STEP 1 - DEVELOP CRITICAL ELEMENT(S)/SUBELEMENT(S)

PROGRAM GOAL(S) At least one is mandatory, up to three are permitted.

1. SPECIFIC PROGRAM GOAL CRITICAL ELEMENT (Number sequentially, 1, 2, 3, etc.)
   a. Subelements (Based on assignments, there may be more than one subelement, list sequentially, a, b, c, etc.)

Responsibilities of DEDROGR Office

Continue to implement the guidance from the Commission outlined in the October 8, 1981 memorandum from Chairman Palladino, to the EDO establishing the Office of the Deputy EDO for Regional Operations and Generic Requirements (DEDROGR).

a. Controlling Generic Requirements

STEP 2 - IDENTIFY PERFORMANCE STANDARDS

PERFORMANCE STANDARDS/EXPECTED RESULTS

Serve as Chairman of the Committee to Review Generic Requirements according to the procedures in the Charter approved by the Commission on June 16, 1982. Take actions to ensure that the program offices and regional offices effectively control generic requirements according to Commission policy.

STEP 4 - PERFORMANCE APPRAISAL/EVALUATION

(Check appropriate box under performance appraisal) O - OUTSTANDING E - EXCELLENT S - FULLY SUCCESSFUL M - MINIMALLY SATISFACTORY U - UNSATISFACTORY

PERFORMANCE APPRAISAL (Supervising Executive) NARRATIVE JUSTIFICATION OF LEVEL SELECTED

PERFORMANCE APPRAISAL: O E S M U

The CRGR has had a profound and beneficial effect on the way the agency has conducted its business. It has brought about a disciplined approach to decision making in generic requirements and has resulted in a large improvement in the quality of the requirements issued. The CRGR is accepted and respected by the principal managers of the agency as a major contributor to the achievement of agency goals and objectives. Mr. Stello's leadership and drive and intellectual force has been the basic reasons for the CRGR's success.

Performance Rating: X

PERFORMANCE RATING (To be completed for each critical element)

If continuation sheet, NRC Form 361A, as required

FORM 351A

U.S. NUCLEAR REGULATORY COMMISSION

SES PERFORMANCE PLANNING AND APPRAISAL *(Continuation)*

EMPLOYEE'S NAME (Last, first, middle initial)

STELLO, JR., VICTOR

STEP 1 – CRITICAL ELEMENT(S)/SUBELEMENT(S) *(Continued)*	STEP 2—IDENTIFY PERFORMANCE STANDARDS *(Continued)*	STEP 4—PERFORMANCE APPRAISAL/EVALUATION *(Continued)* *(Check appropriate box under performance appraisal)* O—OUTSTANDING E—EXCELLENT S—FULLY SUCCESSFUL M—MINIMALLY SATISFACTORY U—UNSATISFACTORY					
SPECIFY THE ELEMENT/SUBELEMENTS THAT ARE BEING CONTINUED	PERFORMANCE STANDARDS/EXPECTED RESULTS	PERFORMANCE APPRAISAL (Supervising Executive) NARRATIVE JUSTIFICATION OF LEVEL SELECTED	PERFORMANCE APPRAISAL				
			O	E	S	M	U
b. Reducing Backlog of Operating Reactor Licensing Actions	Oversee the operating reactor licensing activities of the program offices and regional offices to ensure that the licensing backlog continues to be reduced in an expeditious manner.	The licensing backlog remains a difficult and troubling problem. Results are difficult but Mr. Stello's efforts in working with the NRR management is seeing some slow progress in the reduction effort.					
		Performance Rating:		X			
c. Regional Operations	Supervise NRC's regional operations and resolve issues raised to the EDO's office. Oversee the transfer of responsibilities from Headquarters to the Regional Offices according to Commission policy. Ensure that the transfer of manpower and budget resources is carried out in a smooth and efficient manner.	The goals of transferring responsibility for key regulatory issues from Headquarters to the regions has been essentially accomplished on time. Regional communication has improved greatly. Mr. Stello's efforts have allowed me to keep abreast and resolve issues developing in regional programs before they reach crisis proportions.					
		Performance Rating:	X				
		CRITICAL ELEMENT PERFORMANCE RATING:	X				
		PERFORMANCE RATING *(To be completed for each critical element)*					

STEP 1 – CRITICAL ELEMENT(S)/SUBELEMENT(S) (Continued)	STEP 2 – IDENTIFY PERFORMANCE STANDARDS (Continued)	STEP 4 – PERFORMANCE APPRAISAL/EVALUATION (Continued)					
MANAGEMENT EFFECTIVENESS GOAL (Coverage of subelements a through e is mandatory; additional subelements are optional) a. PLANNING AND ORGANIZING b. TIMELINESS OF WORK OR PRODUCT c. SELECTION, DEVELOPMENT, AND APPRAISAL OF STAFF d. RESOURCE UTILIZATION e. EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION EFFORTS (Relating to all groups protected by antidiscrimination laws or covering all employment practices) f. ADDITIONAL SUBELEMENTS (If appropriate)	PERFORMANCE STANDARDS/EXPECTED RESULTS	O – OUTSTANDING E – EXCELLENT S – FULLY SUCCESSFUL M – MINIMALLY SATISFACTORY U – UNSATISFACTORY PERFORMANCE APPRAISAL (Supervising Executive) NARRATIVE JUSTIFICATION OF LEVEL SELECTED	PERFORMANCE APPRAISAL O	E	S	M	U
a. Planning and Organizing (mandatory)	Careful, effective planner anticipates and takes action to solve problems. Is flexible and able to adjust priorities. Searches out facts and arrives at sound solutions. Flexible and open to new ideas.	Mr. Stello's performance in this area is truly outstanding. He is invariably correct in forecasting where problems are developing. He provides not only the definitions of the problem but, most importantly, the options I need to look at for solutions. Performance Rating:	X				
b. Timeliness of Work or Product (mandatory)	Effectively balances resources. Finished products are consistently submitted on time.	I have never yet been forced to wait for a work product from Mr. Stello. Performance Rating:	X				
c. Selection and Development of Staff (mandatory)	Selects staff carefully in a timely manner. Maintains an appropriate balance of employee expertise, experience and grade. Encourages employee development and training to improve staff proficiencies and capabilities.	The staff of the DEDROGR is looked upon as one of the most effective and highly motivated in the agency. Performance Rating:	X				
d. Resource Utilization (mandatory)	Uses minimum material with good results. Establishes control to ensure that manpower and dollars are accounted for and conserved. Develops and utilizes cost-effectiveness methods.	The application of the test of cost effectiveness is the prime mission of Mr. Stello's office. His concern and reasoned judgment in this area sets the standards for the agency. Performance Rating:	X				
e. Equal Employment and Affirmative Action Efforts (mandatory)	Supports the goals and objectives of NRC's EEO program and actively encourages the recruitment and hiring of minorities and women. Considers the rights and viewpoints of others without prejudice or bias. Encourages free and open discussions to foster better understanding of viewpoints and opinions. Evaluates employee's work quality and quantity and provides timely counsel to improve performance and morale.	Mr. Stello's consistently and conscientiously promotes the goals of the EEO program. Performance Rating:	X				
(Use continuation sheet, NRC Form 381A, as required)		PERFORMANCE RATING (To be completed for each critical element)					

NRC FORM 351A
(1-79)

U.S. NUCLEAR REGULATORY COMMISSION

SES PERFORMANCE PLANNING AND APPRAISAL *(Continuation)*

EMPLOYEE'S NAME (Last, first, middle initial): STELLO, JR., VICTOR

STEP 1 - CRITICAL ELEMENT(S)/SUBELEMENT(S) *(Continued)*	STEP 2—IDENTIFY PERFORMANCE STANDARDS *(Continued)*	STEP 4—PERFORMANCE APPRAISAL/EVALUATION *(Continued)* *(Check appropriate box under performance appraisal)* O—OUTSTANDING E—EXCELLENT S—FULLY SUCCESSFUL M—MINIMALLY SATISFACTORY U—UNSATISFACTORY					
SPECIFY THE ELEMENT/SUBELEMENTS THAT ARE BEING CONTINUED	PERFORMANCE STANDARDS/EXPECTED RESULTS	PERFORMANCE APPRAISAL (Supervisory Comment) NARRATIVE JUSTIFICATION OF LEVEL SELECTED	O	E	S	M	U
f. Commission Papers Develop well-organized, clear, and concise Commission papers. Focus attention on significant issues presented in papers. Include resource impacts of proposed actions and recommendations concerning whether resource needs should be accommodated by reprogramming or included in budget request.	Minimum number of papers returned to Office for rewrite.	I have looked to Mr. Stello to maintain a close scrutiny over a broad segment of technical public policy issues developed in Commission papers. His ability to sort through and crystallize issues is outstanding. Performance Rating:	X				
g. PERSONNEL APPRAISALS Performance contracts with all subordinates, should be used as a management tool. Rating for all supervised personnel should reflect a discriminating view toward rating performance.	Excellent and Outstanding ratings limited to those that excel; Marginal and Unsatisfactory rating utilized when required. Rating complete on schedule established by ADM.	Mr. Stello has an outstanding ability to evaluate performance and articulate balanced and fair appraisals. Performance Rating:	X				
		CRITICAL ELEMENT PERFORMANCE RATING:	X				

PERFORMANCE RATING (To be completed for each critical element)

STELLO, JR. VICTOR

STEP 1 – CRITICAL ELEMENT(S)/SUBELEMENT(S) (Continued)	STEP 2 – IDENTIFY PERFORMANCE STANDARDS (Continued)	STEP 4 – PERFORMANCE APPRAISAL/EVALUATION (Continued) O – OUTSTANDING E – EXCELLENT S – FULLY SUCCESSFUL M – MINIMALLY SATISFACTORY U – UNSATISFACTORY				
INDIVIDUAL PERFORMANCE (Coverage of subelements a and b is mandatory, additional subelements are optional) a PROBLEM SOLVING b INTERPERSONAL SKILLS, INCLUDING COMMUNICATIONS c ADDITIONAL SUBELEMENTS (if appropriate)	PERFORMANCE STANDARDS/EXPECTED RESULTS	PERFORMANCE APPRAISAL (Supervisory Executive) NARRATIVE JUSTIFICATION OF LEVEL SELECTED	PERFORMANCE APPRAISAL O	E	S	M
Problem Solving (mandatory)	Seeks out all available data. Consistently provides accurately and timely solutions. Accepts responsibility and learns from incorrect judgments and decisions. Provides effective solutions by clear and logical thinking.	Mr. Stello is the trouble shooter of the agency. He has outstanding ability to sense where the next problem area will be. His work on the steam generator and pipe crack issues were of invaluable service to the agency. Performance Rating:	X			
Interpersonal Skills Including Communications (mandatory)	Commands respect of subordinates, peers and supervisors. Fair and consistent in dealing with others. Consistently displays calm and controlled behavior.	Mr. Stello is a born leader. He has the respect and confidence of the professional staff of the agency. Performance Rating:	X			
Task Force/Special Projects Assignments						
Support of Significant Ad Hoc Assignments (if applicable).	Accepts responsibility of assigned tasks. Consistently displays initiative.	I have never had anyone accept responsibility as readily and responsibly as Mr.. Stello. Performance Rating:	X			
		CRITICAL ELEMENT PERFORMANCE RATING:	X			
Use continuation sheet, NRC Form 201A, as required		PERFORMANCE RATING (To be completed for each critical element)				

NRC Form 381
(4-82)
NRCM 4153

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES) PERFORMANCE PLANNING AND APPRAISAL

SUPERVISING EXECUTIVE: At the beginning of the rating period, **STEPS 1, 2 and 3** are completed. At the end of the rating period, complete **STEP 4.**

STEP 4—PERFORMANCE APPRAISAL/EVALUATION *(Continued)* **SUPERVISING EXECUTIVE:** Place Summary rating *(Mandatory)*, any recommended pay level change, reassignment or removal action in **STEP 4 AND 6 CONTINUED,** on the Summary Page, after **STEP 6,** sign and date.

SUPERVISING EXECUTIVE'S COMMENTS *(Brief narrative summary)* May document areas for future emphasis or training and development needs. Begin performance planning for the next rating period, using a new NRC Form 381.

Mr. Stello is one of the most respected and dominant managers in the agency. His technical knowledge and management ability make him a truly outstanding member of the SES.

OVERALL RATING: OUTSTANDING

STEP 4A—If Reviewing Official used in office, forward to that official **(STEP 5).**
STEP 4B—If Reviewing Official not used, proceed to **STEP 6.**

STEP 5—REVIEWING OFFICIAL: *(Optional by Office) Reviewer cannot change appraisal or rating.* Indicate only if review has been made. Complete and return within three workdays. ☐ YES

STEP 6—SUPERVISING EXECUTIVE: Discuss appraisal with Senior Executive. Sign and date STEP 4 AND 6 CONTINUED on the Summary Page. Note: If there is another supervisory level between Supervising Executive and Ranking Official, send an information copy to that official.

William J. Dircks, EDO

STEP 7—SENIOR EXECUTIVE: I have reviewed and discussed my performance appraisal with my supervisor. My signature does not imply that I agree with the appraisal or rating. *(Complete this step and return this appraisal to your supervisor within five work days.)*

Victor Stello, Jr., DEDROGR Victor Stello Jr.

SENIOR EXECUTIVE'S SIGNATURE *(Mandatory)*

DATE 8/2/84

INDEPENDENT REVIEW
☐ REQUESTED
☐ NOT REQUESTED

SENIOR EXECUTIVE'S COMMENTS *(Optional) (Use additional page if necessary.)*

STEP 8—SUPERVISING EXECUTIVE: On receipt of appraisal, supply one copy to the Senior Executive; and
STEP 8A—If an Independent Review is requested, send the appraisal to the Performance Review Board.
STEP 8B—If an Independent Review is not requested, send the original of the appraisal to the Ranking Official.

STEP 9—PERFORMANCE REVIEW BOARD: Appoint an Independent Executive Reviewer, if requested by the Senior Executive, within two work days. *(Mandatory, if requested. Insert name, position title, and organization below.)*

INDEPENDENT EXECUTIVE APPOINTED	POSITION TITLE	ORGANIZATION

STEP 10—INDEPENDENT EXECUTIVE REVIEWER: Conduct review within five workdays of assignment. *(Mandatory)* Indicate below whether you agree or disagree with the supervisor's recommended rating and why *(Use additional pages if necessary)*. Place recommended summary rating, any recommended pay level change, reassignment or removal action in **STEP 10 CONTINUED,** on the Summary Page

NRC Form 351
(6-83)
NRCM 4163

SENIOR EXECUTIVE SERVICE (SES) PERFORMANCE PLANNING AND APPRAISAL SUMMARY PAGE

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE—TYPED NAME (Last, first, middle initial)
STELLO, JR., VICTOR

INSTRUCTIONS: This page contains the final steps required for the SES performance appraisal process, and is used as the cover for the convenience of the final reviewers. Complete only the upper right portion of this page, and proceed to page 1.

STEP	SUMMARY RATING					PAY LEVEL		RANKING		AWARD RECOMMENDED			PLACEMENT		SIGNATURE	DATE
	O	E	S	M	U	FROM ES	TO ES	TOP 5%	7-25%	NO	YES	AMOUNT	REASSIGN	REMOVE		
4 AND 6 CONTINUED	X														SUPERVISING EXECUTIVE William J. Dircks, EDO	7/28/83
10 CONTINUED															INDEPENDENT EXECUTIVE REVIEWER (if requested)	
11								X			X				RANKING OFFICIAL William J. Dircks, Executive Director for Operations	7/29/83
12	X										X	$12,000			PERFORMANCE REVIEW BOARD Patricia G Norry	9-13-83
13															RATING OFFICIAL/APPOINTING AUTHORITY (Final decision) William J. Dircks, Executive Director for Operations	SEP 9 1983
14											X	$12,000			AWARDING AUTHORITY (Final decision) William J. Dircks, Executive Director for Operations	

PERFORMANCE REVIEW BOARD COMMENTS (Optional)

[illegible]
G. Arlotto
E. Case
G. Cunningham
J. Davis
R. DeYoung
C. Heltemes
[illegible]

[illegible]
R. Minogue
J. Martin
R. Page
D. Ross
[redacted]
H. Thompson

RATING OFFICIAL/APPOINTING AUTHORITY COMMENTS (Optional)

AWARDING AUTHORITY COMMENTS (Optional)

PERFORMANCE RATING DEFINITIONS

OUTSTANDING	For subelements and critical elements, job performance consistently exceeded the performance standards to an exceptional degree. For the summary rating, the Senior Executive performed at an overall outstanding level and has been rated outstanding in all critical elements and not less than excellent in all subelements.
EXCELLENT	Job performance frequently exceeded that expected in the performance standards to a noticeable degree. For the summary rating, the Senior Executive performed at an overall excellent level and has been rated at least excellent in all critical elements and not less than fully successful in all subelements.
FULLY SUCCESSFUL	Job performance consistently met that expected in the performance standards. For the summary rating, the Senior Executive performed at an overall fully successful level.
MINIMALLY SATISFACTORY	Job performance consistently was less than that expected in the performance standards. For the summary rating, the Senior Executive performed either at an overall minimally satisfactory level so that performance can be described as marginal, or has been rated minimally satisfactory in at least one critical element of sufficient importance that it outweighs fully successful or better performance in other critical elements.
UNSATISFACTORY	Job performance was normally below that expected in the performance standards. For the summary rating, the Senior Executive performed at an unsatisfactory level, has been rated unsatisfactory in one or more critical elements, and overall performance must be rated unsatisfactory.

NRC Form 351
NRCM 4162
(4-82)

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES) PERFORMANCE PLANNING AND APPRAISAL

SENIOR EXECUTIVE – TYPED NAME (Last, first, middle initial): STELLO, VICTOR, JR.

TITLE: Deputy Executive Director for Regional Operations & Generic Reqmts.

ORGANIZATION: Office of the Executive Director for Operations

SIGNATURE:

DATE:

RATING PERIOD: FROM 7/1/82 TO 6/30/83

CAREER APPOINTEE: XX YES ☐ NO

ES LEVEL: ES-6

SUPERVISING EXECUTIVE – TYPED NAME: William J. Dircks

TITLE: Executive Director for Operations

ORGANIZATION: Office of the EDO

SIGNATURE:

DATE: 8/10/82

STEP 3 – REVIEW/APPROVAL OF PERFORMANCE PLAN (To be completed after Steps 1 and 2 below)

REVIEWING OFFICIAL – TYPED NAME: Nunzio J. Palladino

TITLE: Chairman

ORGANIZATION:

SIGNATURE:

DATE:

PLANNING INSTRUCTIONS: Senior and Supervisory Executives must jointly develop Critical Element/Subelements, and Standards before beginning of rating period. Appraisal to be completed at the end of the rating period.

STEP 1 – DEVELOP CRITICAL ELEMENT(S)/SUBELEMENT(S)	STEP 2 – IDENTIFY PERFORMANCE STANDARDS	STEP 4 – PERFORMANCE APPRAISAL/EVALUATION					
PROGRAM GOAL(S) At least one is mandatory, up to three are permitted 1. SPECIFIC PROGRAM GOAL CRITICAL ELEMENT (Number sequentially, 1, 2, 3, etc.) a. Subelements (Based on assignments, there may be more than one subelement, letter sequentially, a, b, c, etc.)	PERFORMANCE STANDARDS/EXPECTED RESULTS	(Check appropriate box under performance appraisal) O – OUTSTANDING E – EXCELLENT S – FULLY SUCCESSFUL M – MINIMALLY SATISFACTORY U – UNSATISFACTORY PERFORMANCE APPRAISAL (Supervising Executive) NARRATIVE JUSTIFICATION OF LEVEL SELECTED	PERFORMANCE APPRAISAL O	E	S	M	U
1 Responsibilities of DEDROGR Office Continue to implement the guidance from the Commission outlined in the October 8, 1981 memorandum from Chairman Palladino, to the EDO establishing the Office of the Deputy EDO for Regional Operations and Generic Requirements (DEDROGR). a. Controlling Generic Requirements	Serve as Chairman of the Committee to Review Generic Requirements according to the procedures in the Charter approved by the Commission on June 16, 1982. Take actions to ensure that the program offices and regional offices effectively control generic requirements according to Commission policy.	During the appraisal period, CRGR reviewed over 30 issues and was briefed on another dozen. Over 90% of the issues reviewed, resulted in substantive change. I believe the review process established by CRGR has resulted in a major and significant improvement in the discipline with which NRC deals with generic requirements, and in the final quality of the requirements issued. The complexity of the requirements and the organizational matrix in which they are developed is extremely high, as is their importance in the regulatory process. CRGR has been an extremely well ordered process. Performance Rating:	X				
		PERFORMANCE RATING (To be completed for each critical element)					

(Use continuation sheet, NRC Form 351A, as required)

RC Form 201A

U.S. NUCLEAR REGULATORY COMMISSION

SES PERFORMANCE PLANNING AND APPRAISAL *(Continuation)*

EMPLOYEE'S NAME (Last, first, middle initial)

STELLO, VICTOR JR.

STEP 1 - CRITICAL ELEMENT(S)/SUBELEMENT(S) (Continued)	STEP 2—IDENTIFY PERFORMANCE STANDARDS (Continued)	STEP 4—PERFORMANCE APPRAISAL/EVALUATION (Continued)					
		(Check appropriate box under performance appraisal) O—OUTSTANDING E—EXCELLENT S—FULLY SUCCESSFUL M—MINIMALLY SATISFACTORY U—UNSATISFACTORY					
SPECIFY THE ELEMENT/SUBELEMENTS THAT ARE BEING CONTINUED	PERFORMANCE STANDARDS/EXPECTED RESULTS	PERFORMANCE APPRAISAL (Supervisory Evaluation) NARRATIVE JUSTIFICATION OF LEVEL SELECTED	PERFORMANCE APPRAISAL				
			O	E	S	M	U
b. Reducing Backlog of Operating Reactor Licensing Actions	Oversee the operating reactor licensing activities of the program offices and regional offices to ensure that the licensing backlog continues to be reduced in an expeditious manner.	The backlog of licensing actions has been reduced during the rating period about 9% - from about 3900 to 3550. This is a meaningful reduction which can be attributed to the oversight exercised by DEDROGR over the Regions and Headquarters Offices. Performance Rating:		X			
c. Regional Operations	Supervise NRC's regional operations and resolve issues raised to the EDO's office. Oversee the transfer of responsibilities from Headquarters to the Regional Offices according to Commission policy. Ensure that the transfer of manpower and budget resources is carried out in a smooth and efficient manner.	During this period DEDROGR developed and coordinated a major policy statement on decentralization and coordinated the smooth transfer of functions to the Regions on, or ahead of, schedule. Supervision of the Regions was improved through the establishment of routine lines of communication and periodic meetings which provided Regional input on a large number of issues which had heretofore been the province of Headquarters Offices. Because of these efforts, decentralization has proceeded at an orderly pace and the agency's efforts have profited by input which was not previously fully considered. Performance Rating:	X				
		Critical Element Performance Rating:	X				
		PERFORMANCE RATING (To be completed for each critical element)					

PART I—CRITICAL ELEMENTS/SUBELEMENTS (continued)

MANAGEMENT EFFECTIVENESS GOAL [illegible] a. PLANNING AND ORGANIZING b. TIMELINESS OF WORK OR PRODUCT c. SELECTION, DEVELOPMENT, AND APPRAISAL OF STAFF d. RESOURCE UTILIZATION e. EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION EFFORTS [illegible] f. ADDITIONAL SUBELEMENTS (if appropriate)	PERFORMANCE STANDARDS/EXPECTED RESULTS	O—OUTSTANDING E—EXCELLENT S—FULLY SUCCESSFUL M—MINIMALLY SATISFACTORY U—UNSATIS PERFORMANCE APPRAISAL [illegible] NARRATIVE JUSTIFICATION OF LEVEL SELECTED	O	E
a. Planning and Organizing (mandatory)	Careful, effective planner anticipates and takes action to solve problems. Is flexible and able to adjust priorities. Searches out facts and arrives at sound solutions. Flexible and open to new ideas.	More than other senior executives, Mr. Stello attempts to stay ahead of immediate issues and looks ahead to the next step in, or the next consequence of, an important action. His track record in forcasting upcoming problems is exceptional. He remains accessible to new ways of doing business and is tenacious in following through and causing others to do likewise. **Performance Rating:**	X	
b. Timeliness of Work or Product (mandatory)	Effectively balances resources. Finished products are consistently submitted on time.	Mr. Stello structures his work before beginning action and is invariably timely in meeting deadlines. **Performance Rating:**	X	
c. Selection and Development of Staff (mandatory)	Selects staff carefully in a timely manner. Maintains an appropriate balance of employee expertise, experience and grade. Encourages employee development and training to improve staff proficiencies and capabilities.	The DEDROGR staff has been very carefully selected and that selection is evident in its effectiveness. He is also very perceptive in his evaluation of senior staff selections when his opinion is solicited. **Performance Rating:**	X	
d. Resource Utilization (mandatory)	Uses minimum material with good results. Establishes control to ensure that manpower and dollars are accounted for and conserved. Develops and utilizes cost-effectiveness methods.	A major function of CRGR is to balance the expenditure of resources against safety requirements. His technical expertise and ability to pose questions striking to the heart of the matter have had a major impact on the ability of the agency to utilize both NRC and industry resources to the best advantage. **Performance Rating:**	X	
e. Equal Employment and Affirmative Action Efforts (mandatory)	Supports the goals and objectives of NRC's EEO program and actively encourages the recruitment and hiring of minorities and women. Considers the rights and viewpoints of others without prejudice or bias. Encourages free and open discussions to foster better understanding of viewpoints and opinions. Evaluates employee's work quality and quantity and provides timely counsel to improve performance and morale.	Mr. Stello has effectively supported EEO activities in past assignments and supports them agency-wide in his present position. **Performance Rating:**	X	
		PERFORMANCE RATING [illegible]		

[illegible]

Form 301A

SES PERFORMANCE PLANNING AND APPRAISAL *(Continuation)*

Victor Stello, Jr.

STEP 1 - CRITICAL ELEMENT(S)/SUBELEMENT(S) (Continued)	STEP 2—IDENTIFY PERFORMANCE STANDARDS (Continued)	STEP 4—PERFORMANCE APPRAISAL/EVALUATION (Continued) (Check appropriate box under performance appraisal) E—EXCELLENT S—FULLY SUCCESSFUL M—MINIMALLY SATISFACTORY O—OUTSTANDING U—UNSATISF			
SPECIFY THE ELEMENT/SUBELEMENTS THAT ARE BEING CONTINUED	PERFORMANCE STANDARDS/EXPECTED RESULTS	PERFORMANCE APPRAISAL (Summary Entries) NARRATIVE JUSTIFICATION OF LEVEL SELECTED	O	E	S
f. Commission Papers Develop well-organized, clear, and concise Commission papers. Focus attention on significant issues presented in papers. Include resource impacts of proposed actions and recommendations concerning whether resource needs should be accommodated by reprogramming or included in budget request.	Minimum number of papers returned to Office for rewrite.	Mr. Stello reviews selected Commission papers. I can rely on him fully to assure that they are substantially correct. He has outstanding ability to spot critical issues and develop arguments relating to those issues. His talent, drive and dedication have contributed significantly to overall agency effectiveness. Performance Rating:	X		
g. SES Appraisals SES contacts, with all subordinates, should be used as a management tool. Rating for all SES present in the Office should reflect a discriminating view toward rating performance.	Excellent and Outstanding ratings limited to those that excel; Marginal and Unsatisfactory ratings utilized when required. Rating complete on schedule established by ADM.	Writes reasonable appraisals and rates in a balanced way. Takes pride in developing personnel. I have complete reliance on his judgment. He has displayed outstanding performance in this area. He puts in long hours and places heavy emphasis on producing fine and accurate ratings. Performance Rating:	X		
		CRITICAL ELEMENT PERFORMANCE RATING:	X		

PERFORMANCE RATING (To be completed for each critical element)

EP 1—CRITICAL ELEMENT(S)/SUBELEMENT(S) (Continued)	STEP 2—IDENTIFY PERFORMANCE STANDARDS (Continued)	STEP 3—PERFORMANCE APPRAISAL [illegible] O—OUTSTANDING E—EXCELLENT S—FULLY SUCCESSFUL M—MINIMALLY SATISFACTORY U—UNSATISFACTOR				
[illegible] PERFORMANCE (Coverage of subelements a and b is mandatory, additional subelements as used) PROBLEM SOLVING INTERPERSONAL SKILLS, INCLUDING COMMUNICATIONS ADDITIONAL SUBELEMENTS (if appropriate)	PERFORMANCE STANDARDS/EXPECTED RESULTS	PERFORMANCE APPRAISAL (Supervisory Executive) NARRATIVE JUSTIFICATION OF LEVEL SELECTED	PERFORMANCE APPRAISAL O	E	S	M
Problem Solving (mandatory)	Seeks out all available data. Consistently provides accurately and timely solutions. Accepts responsibility and learns from incorrect judgments and decisions. Provides effective solutions by clear and logical thinking.	Mr. Stello aggressively seeks out problems and pursues their solution. He uses the formal NRC organization exceptionally well in searching out data and diverse opinions, but knows better than many others when to set up a special group to deal with an issue. His organizational and technical knowledge serves him uniquely in finding solutions to complex problems. Performance Rating:	X			
Interpersonal Skills Including Communications (mandatory)	Commands respect of subordinates, peers and supervisors. Fair and consistent in dealing with others. Consistently displays calm and controlled behavior.	Mr. Stello commands the respect of a broad range [illegible]f personnel in the agency and outside the agency. [illegible]n his current position he has little organizational power on which to lean. His performance depends on being right and bringing others along with his views. Performance Rating:	X			
Task Force/Special Projects Assignments Support of Significant Ad Hoc Assignments (if applicable).	Accepts responsibility of assigned tasks. Consistently displays initiative.	He has taken on a number of assignments outside his functional position. He has done them well at the expense of other duties he would prefer. Performance Rating:		X		
		CRITICAL ELEMENT PERFORMANCE RATING:	X			
		PERFORMANCE RATING (To be completed for each critical element)				

[illegible] NRC Form [illegible] as required)

NRC Form 361
(4-82)
NRCM 4162

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES) PERFORMANCE PLANNING AND APPRAISAL

SUPERVISING EXECUTIVE: At the beginning of the rating period, STEPS 1, 2 and 3 are completed. At the end of the rating period, complete STEP 4.

STEP 4—PERFORMANCE APPRAISAL/EVALUATION (Continued) **SUPERVISING EXECUTIVE:** Place Summary rating (Mandatory), any recommended pay level change, reassignment or removal action in **STEP 4 AND 6 CONTINUED,** on the Summary Page, after **STEP 6,** sign and date.

SUPERVISING EXECUTIVE'S COMMENTS (Brief narrative summary; also document areas for future emphasis or training and development needs. Begin performance planning for the next rating period, using a new NRC Form 361.)

Mr. Stello's performance has been outstanding. He assumes responsibility for assignments in a cooperative and authoritative manner. He manages complex programs and develops solutions benefitting the agency and its mission. His technical judgment combined with his outstanding management attributes, clearly distinguishes him among the top executives in the NRC.

OVERALL RATING: OUTSTANDING

STEP 4A—If Reviewing Official used in office, forward to that official (STEP 5).
STEP 4B—If Reviewing Official not used, proceed to STEP 6.

STEP 5—REVIEWING OFFICIAL: (Optional by Office/Division option) [illegible] appraisal or rating. Indicate only if review has been made. Complete and return within three workdays. ☐ YES

STEP 6—SUPERVISING EXECUTIVE: Discuss appraisal with Senior Executive. Sign and date STEPS 4 AND 6 CONTINUED on the Summary Page. Note: If there is another supervisory level between Supervising Executive and Ranking Official, send an information copy to that official.

William J. Dircks, EDO

STEP 7—SENIOR EXECUTIVE: I have reviewed and discussed my performance appraisal with my supervisor. My signature does not imply that I agree with the appraisal or rating. (Complete this step and return this appraisal to your supervisor within five work days.)

Victor Stello, Jr., DEDROGR

SENIOR EXECUTIVE'S SIGNATURE (Mandatory)

DATE 7/27/83

INDEPENDENT REVIEW
☐ REQUESTED
☑ NOT REQUESTED

SENIOR EXECUTIVE'S COMMENTS (Optional—Use additional page if necessary.)

STEP 8—SUPERVISING EXECUTIVE: On receipt of appraisal, supply one copy to the Senior Executive; and

STEP 8A—If an Independent Review is requested, send the appraisal to the Performance Review Board.
STEP 8B—If an Independent Review is not requested, send the original of the appraisal to the Ranking Official.

STEP 9—PERFORMANCE REVIEW BOARD: Appoint an Independent Executive Reviewer, if requested by the Senior Executive, within two work days. (Mandatory if requested. Insert name, position title, and organization below.)

INDEPENDENT EXECUTIVE APPOINTED	POSITION TITLE	ORGANIZATION

STEP 10—INDEPENDENT EXECUTIVE REVIEWER: Conduct review within five workdays of assignment. (Mandatory). Indicate below whether you agree or disagree with the supervisor's recommended rating and why (Use additional pages if necessary). Place recommended summary rating, any recommended pay level change, reassignment or removal action in **STEP 10 CONTINUED,** on the Summary Page.

NRC FORM 341
(4-82)
NRCM 4153

SENIOR EXECUTIVE SERVICE (SES) PERFORMANCE PLANNING AND APPRAISAL SUMMARY PAGE

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE—TYPED NAME (Last, first, middle initial)
STELLO, JR., VICTOR

INSTRUCTIONS: This page contains the final steps required for the SES performance appraisal process, and is used as the cover for the convenience of the final reviewers. Complete only the upper right portion of this page, and proceed to page 1.

STEP	SUMMARY RATING					PAY LEVEL		RANKING		AWARD RECOMMENDED			PLACEMENT	
	O	E	S	M	U	FROM ES	TO ES	TOP 5%	7-25%	NO	YES	AMOUNT	REASSIGN	REMOVE
4 AND 6 CONTINUED		X												
10 CONTINUED														
11								✓			✓			
12		X									X	9,500		
13														
14														

SIGNATURE	DATE
SUPERVISING EXECUTIVE William J. Dircks, Executive Director for Operations	8/10/82
INDEPENDENT EXECUTIVE REVIEWER (if requested)	
RANKING OFFICIAL	
PERFORMANCE REVIEW BOARD Patricia G Norry	
RATING OFFICIAL/APPOINTING AUTHORITY (Final decision)	9-5
AWARDING AUTHORITY (Final decision)	[illegible] 27 1982

PERFORMANCE REVIEW BOARD COMMENTS (Optional)

D. Ross
G. Cunningham
J. Hoyle
J. Fitzgerald
O. Bassett
P. Norry

E. Case
J. Davis
R. DeYoung
H. Thompson
R. Page

RATING OFFICIAL/APPOINTING AUTHORITY COMMENTS (Optional)

AWARDING AUTHORITY COMMENTS (Optional)

PERFORMANCE RATING DEFINITIONS

OUTSTANDING	For subelements and critical elements, job performance consistently exceeded the performance standards to an exceptional degree. For the summary rating, the Senior Executive performed at an overall outstanding level and has been rated outstanding in all critical elements and not less than excellent in all subelements.
EXCELLENT	Job performance frequently exceeded that expected in the performance standards to a noticeable degree. For the summary rating, the Senior Executive performed at an overall excellent level and has been rated at least excellent in all critical elements and not less than fully successful in all subelements.
FULLY SUCCESSFUL	Job performance consistently met that expected in the performance standards. For the summary rating, the Senior Executive performed at an overall fully successful level.
MINIMALLY SATISFACTORY	Job performance consistently was less than that expected in the performance standards. For the summary rating, the Senior Executive performed either at an overall minimally satisfactory level so that performance can be described as marginal, or has been rated minimally satisfactory in at least one critical element of sufficient importance that it outweighs fully successful or better performance in other critical elements.
UNSATISFACTORY	Job performance was normally below that expected in the performance standards. For the summary rating, the Senior Executive performed at an unsatisfactory level, has been rated unsatisfactory in one or more critical elements, and overall performance must be rated unacceptable.

NRC Form 391
NRCM 4162

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES)
PERFORMANCE PLANNING AND APPRAISAL

SENIOR EXECUTIVE – TYPED NAME (Last, first, middle initial): STELLO, VICTOR, JR.
TITLE: Deputy EDO for Regional Operations & Generic Requirements
ORGANIZATION: Office of the Executive Director for Operations
SIGNATURE: Victor Stello
DATE: 1/25/82

RATING PERIOD
FROM: 10/1/81
TO: 6/30/82

CAREER APPOINTEE
☒ YES
☐ NO

ES LEVEL: ES -6

SUPERVISING EXECUTIVE – TYPED NAME: William J. Dircks
TITLE: Executive Director for Operations
ORGANIZATION: Office of the EDO
SIGNATURE: William J. Dircks Jr.
DATE: 1/20/82

STEP 3 – REVIEW/APPROVAL OF PERFORMANCE PLAN (To be completed after Steps 1 and 2 below)
REVIEWING OFFICIAL – TYPED NAME: Nunzio J. Palladino
TITLE: Chairman
ORGANIZATION:
SIGNATURE: X Nunzio J. Palladino
DATE: 3/1/82

PLANNING INSTRUCTIONS: Senior and Supervisory Executives must jointly develop Critical Element/Subelements, and Standards before beginning of rating period. Appraisal to be completed at the end of the rating period.

STEP 1 – DEVELOP CRITICAL ELEMENT(S)/SUBELEMENT(S)

PROGRAM GOAL(S) At least one is mandatory, up to three are permitted

1. SPECIFIC PROGRAM GOAL CRITICAL ELEMENT (Number sequentially, 1, 2, 3, etc.)

a. Subelements (Based on assignments, there may be more than one subelement, letter sequentially, a, b, c, etc.)

Responsibilities of DEDROGR Office

Effectively implement the guidance from the Commission outlined in the October 8, 1981, memorandum from Chairman Palladino to the EDO establishing the Office of the Deputy EDO for Regional Operations and Generic Requirements (DEDROGR).

STEP 2 – IDENTIFY PERFORMANCE STANDARDS

PERFORMANCE STANDARDS/EXPECTED RESULTS

STEP 4 – PERFORMANCE APPRAISAL/EVALUATION

(Check appropriate box under performance appraisal) O – OUTSTANDING E – EXCELLENT S – FULLY SUCCESSFUL M – MINIMALLY SATISFACTORY U – UNSATISFACTORY

PERFORMANCE APPRAISAL (Supervising Executive)
NARRATIVE JUSTIFICATION OF LEVEL SELECTED

PERFORMANCE APPRAISAL

O	E	S	M	U

PERFORMANCE RATING (To be completed for each critical element)

(Use continuation sheet, NRC Form 391A, as required)

NRC FORM 381A

U.S. NUCLEAR REGULATORY COMMISSION

SES PERFORMANCE PLANNING AND APPRAISAL *(Continuation)*

EMPLOYEE'S NAME (Last, first, middle initial)

STELLO, VICTOR, JR.

STEP 1 – CRITICAL ELEMENT(S)/SUBELEMENT(S) *(Continued)* SPECIFY THE ELEMENT/SUBELEMENTS THAT ARE BEING CONTINUED	STEP 2 – IDENTIFY PERFORMANCE STANDARDS *(Continued)* PERFORMANCE STANDARDS/EXPECTED RESULTS	STEP 4—PERFORMANCE APPRAISAL/EVALUATION *(Continued)* *(Check appropriate box under performance appraisal)* O—OUTSTANDING E—EXCELLENT S—FULLY SUCCESSFUL M—MINIMALLY SATISFACTORY U—UNSATISFACTORY PERFORMANCE APPRAISAL (Supervising Executive) NARRATIVE JUSTIFICATION OF LEVEL SELECTED	O	E	S	M	U
a. Controlling Generic Requirements	Develop the Charter and Procedures for the Committee to Review Generic Requirements and establish procedures for controlling NRC communication of generic requirements to reactor licensees. Chair CRGR meetings and implement the procedures above.	a. Under his direction this subelement was completed on time and correct. The charter and procedures met with approval of the Commission. The CRGR has operated in an outstanding manner and has reflected exceedingly well on the agency. Under his leadership, a number of complex regulatory issues have been tackled and, in my view, resolved with extremely satisfactory results. An example of one of the more complex areas was the development of a framework to deal with emergency planning. Performance Rating:		X			
b. Reducing Backlog of Operating Reactor Licensing Actions	Develop a comprehensive baseline of all operating reactor licensing actions and implement procedures to work off the backlog in an expeditious manner.	b. An accurate count has been made of licensing actions in the agency. Working with NRR, a procedural solution to the problem has been developed and the backlog is now being reduced. In this area, Mr. Stello's performance has been excellent. Performance Rating:		X			
c. Regionalization	Develop a plan for transferring significant additional responsibilities from Headquarters to the Regional Offices and begin implementing the transfer in an expeditious manner.	c. This subelement has been completed in an outstanding manner. The plan has been developed through a set of budget proposals involving the Office of the EDO, Resource Management, and the program offices. The plan was an extremely complex piece of work that sets the framework for future agency development. The Commission has accepted essentially the entire plan with little or no modification. Performance Rating:	X				
		Critical Element Performance Rating:		X			
		PERFORMANCE RATING *(To be completed for each critical element)*					

CONTINUATION PAGE

STEP 2—CRITICAL ELEMENT(S)/SUBELEMENT(S) (Continued)	STEP 3—IDENTIFY PERFORMANCE STANDARDS (Continued)	STEP 4—PERFORMANCE APPRAISAL/EVALUATION (Continued)		
MANAGEMENT: EFFECTIVENESS GOAL (Coverage of subelements a through e is mandatory, additional subelements are optional) a. PLANNING AND ORGANIZING b. TIMELINESS OF WORK OR PRODUCT c. SELECTION, DEVELOPMENT, AND APPRAISAL OF STAFF d. RESOURCE UTILIZATION e. EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION EFFORTS [illegible] f. ADDITIONAL SUBELEMENTS (if appropriate)	PERFORMANCE STANDARDS/EXPECTED RESULTS	O—OUTSTANDING E—EXCELLENT S—FULLY SUCCESSFUL M—MINIMALLY SATISFACTORY U—UNSATISF PERFORMANCE APPRAISAL (Supervisory Evaluation) NARRATIVE JUSTIFICATION OF LEVEL SELECTED	O	E
a. Planning and Organizing (mandatory)	Careful, effective planner anticipates and takes action to solve problems. Is flexible and able to adjust priorities. Searches out facts and arrives at sound solutions. Flexible and open to new ideas.	Mr. Stello rates an outstanding in this area. He has demonstrated a high degree of competence in formulating plans and following through to work implementation. His action in developing the CRGR system and implementing are examples of his strong planning and organizing ability. Because of his flexibility and capabilities, I have used Mr. Stello in a number of assignments not directly related to his principal assignment in the area of generic requirements control. **Performance Rating:**	X	
b. Timeliness of Work or Product (mandatory)	Effectively balances resources. Finished products are consistently submitted on time.	Mr. Stello conscientiously strives to make all deadlines. He seldom, if ever, misses one. **Performance Rating:**		X
c. Selection and Development of Staff (mandatory)	Selects staff carefully in a timely manner. Maintains an appropriate balance of employee expertise, experience and grade. Encourages employee development and training to improve staff proficiencies and capabilities.	Mr. Stello has assembled a small but highly effective staff that has made its presence felt throughout the whole agency. **Performance Rating:**		X
d. Resource Utilization (mandatory)	Uses minimum material with good results. Establishes control to ensure that manpower and dollars are accounted for and conserved. Develops and utilizes cost-effectiveness methods.	A principal part of Mr. Stello's mission is to assure the effective balancing of resources to meet essential safety needs. He has carried out this assignment extremely effectively. Systems are in place that establish agency-wide mechanisms to assure that agency and industry resources are devoted to these safety needs. **Performance Rating:**	X	
e. Equal Employment and Affirmative Action Efforts (mandatory)	Supports the goals and objectives of NRC's EEO program and actively encourages the recruitment and hiring of minorities and women. Considers the rights and viewpoints of others without prejudice or bias. Encourages free and open discussions to foster better understanding of viewpoints and opinions. Evaluates employee's work quality and quantity and provides timely counsel to improve performance and morale.	Mr. Stello carries out these responsibilities in an excellent manner. **Performance Rating:**		X
[illegible] NRC Form 35IA, as required		PERFORMANCE RATING (To be completed for [illegible] of elements)		

NRC Form 351A

SES PERFORMANCE PLANNING AND APPRAISAL *(Continuation)*

STELLO, VICTOR

STEP 1 - CRITICAL ELEMENT(S)/SUBELEMENT(S) *(Continued)*	STEP 2—IDENTIFY PERFORMANCE STANDARDS *(Continued)*	STEP 4—PERFORMANCE APPRAISAL/EVALUATION *(Continued)* *(Check appropriate box under performance appraisal)* O—OUTSTANDING E—EXCELLENT S—FULLY SUCCESSFUL M—MINIMALLY SATISFACTORY U—UNSATISFA			
SPECIFY THE ELEMENT/SUBELEMENTS THAT ARE BEING CONTINUED	PERFORMANCE STANDARDS/EXPECTED RESULTS	PERFORMANCE APPRAISAL (Supervisor's Evaluation) NARRATIVE JUSTIFICATION OF LEVEL SELECTED			
f. Commission Papers Develop well-organized, clear, and concise Commission papers. Focus attention on significant issues presented in papers. Include resource impacts of proposed actions and recommendations concerning whether resource needs should be accommodated by reprogramming or included in budget request.	Minimum number of papers returned to Office for rewrite.	I can rely on Mr. Stello to prepare papers that I can sign with assurance of their acceptability. Performance Rating:	X		
g. SES Appraisals SES contacts, with all subordinates, should be used as a management tool. Rating[illegible] all SES present in the Office should reflect a discriminating view toward rating performance.	Excellent and Outstanding ratings limited to those that excel; Marginal and Unsatisfactory ratings utilized when required. Rating complete on schedule established by ADM.	Mr. Stello has provided invaluable support and assistance in assisting me in carrying out rating and evaluating responsibilities. His input for use in evaluating senior executive personnel is both fair to the individual and supportive of agency goals and missions. Performance Rating:		X	
		CRITICAL ELEMENT PERFORMANCE RATING:		X	
		PERFORMANCE RATING *(To be completed for each critical element)*			

STEP 1 – CRITICAL ELEMENT(S)/SUBELEMENT(S) (Continued)	STEP 2 – IDENTIFY PERFORMANCE STANDARDS (Continued)	STEP 4 – PERFORMANCE APPRAISAL/EVALUATION (Continued) O – OUTSTANDING E – EXCELLENT S – FULLY SUCCESSFUL M – MINIMALLY SATISFACTORY U – UNSATISFACTORY				
INDIVIDUAL PERFORMANCE (Coverage of subelements a and b is mandatory; additional subelements as appropriate) a. PROBLEM SOLVING b. INTERPERSONAL SKILLS, INCLUDING COMMUNICATIONS c. ADDITIONAL SUBELEMENTS (if appropriate)	PERFORMANCE STANDARDS/EXPECTED RESULTS	PERFORMANCE APPRAISAL (Supporting Comments) NARRATIVE JUSTIFICATION OF LEVEL SELECTED	PERFORMANCE APPRAISAL O	E	S	M
a. Problem Solving (mandatory)	Seeks out all available data. Consistently provides accurately and timely solutions. Accepts responsibility and learns from incorrect judgments and decisions. Provides effective solutions by clear and logical thinking.	Mr. Stello consistently seeks out and seems to achieve effective solutions to difficult and complex problems. His work in developing regionalization plans for the agency and in sorting out the complexities of emergency planning are examples of his outstanding performance. Performance Rating:	X			
b. Interpersonal Skills Including Communications (mandatory)	Commands respect of subordinates, peers and supervisors. Fair and consistent in dealing with others. Consistently displays calm and controlled behavior.	Mr. Stello commands the support and respect of his subordinates and peers. His job depends on achieving this respect and support. That he has succeeded in such an outstanding manner in his job goals is testimony of his achievement in this element. Performance Rating:	X			
c. Task Force/Special Projects Assignments .. Support of Significant Ad Hoc Assignments (if applicable).	Accepts responsibility of assigned tasks. Consistently displays initiative.	Mr. Stello has accepted all jobs and assignments with a willingness and good humor that is to be admired. Performance Rating:		X		
		CRITICAL ELEMENT PERFORMANCE RATING:	X			
(Use continuation sheet, NRC Form 314A, as required)		PERFORMANCE RATING (to be completed for each critical element)				

NRC Form 314

NRC Form 361
(4-83)
NRCM 4152

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES) PERFORMANCE PLANNING AND APPRAISAL

SUPERVISING EXECUTIVE: At the beginning of the rating period, STEPS 1, 2 and 3 are completed. At the end of the rating period, complete STEP 4.

STEP 4—PERFORMANCE APPRAISAL/EVALUATION (Continued) **SUPERVISING EXECUTIVE:** Place Summary rating (Mandatory), any recommended pay level change, reassignment or removal action in **STEP 4 AND 6 CONTINUED**, on the Summary Page, after STEP 6, sign and date.

SUPERVISING EXECUTIVE'S COMMENTS [illegible] Begin performance planning for the next rating period, using a new NRC Form 361.

Mr. Stello has performed a difficult assignment in an exemplary manner. He had been asked to leave a program directorship to take on an assignment with a small staff to reform the way the agency does business. To do this job he was assigned, required him to elicit the support and cooperation of diverse elements of the agency not subject to his immediate management control. Not everything he did was popular. He started off with some resistance and hostility from even the highest levels in the agency. He overcame these obstacles and, I believe, he put together a program meeting the goals and objectives the Commission established. Moreover, in the end, he not only managed to achieve these goals and objectives but along the way he overcame whatever opposition existed and mobilized support, understanding, and cooperation of the key managers of the agency.

STEP 4A—If Reviewing Official used in office, forward to that official (STEP 5).
STEP 4B—If Reviewing Official not used, proceed to STEP 6.

☐ YES

STEP 5—REVIEWING OFFICIAL: (Optional by Office) Reviewer cannot change appraisal or rating. Indicate only if review has been made. Complete and return within three workdays.

STEP 6—SUPERVISING EXECUTIVE: Discuss appraisal with Senior Executive. Sign and date STEP 4 AND 6 CONTINUED on the Summary Page. Note: If there is another supervisory level between Supervising Executive and Ranking Official, send an information copy to that official.

William J. Dircks, Executive Director for Operations

STEP 7—SENIOR EXECUTIVE: I have reviewed and discussed my performance appraisal with my supervisor. My signature does not imply that I agree with the appraisal or rating. (Complete this step and return this appraisal to your supervisor within five work days.)

Victor Stello, Jr., Deputy Executive Director for Regional Operations & Generic Requirements

SENIOR EXECUTIVE'S SIGNATURE (Mandatory)

DATE 8/5/87

INDEPENDENT REVIEW
☐ REQUESTED
☑ NOT REQUESTED

SENIOR EXECUTIVE'S COMMENTS (Optional) (Use additional page if necessary.)

STEP 8—SUPERVISING EXECUTIVE: On receipt of appraisal, supply one copy to the Senior Executive; and
STEP 8A—If an Independent Review is requested, send the appraisal to the Performance Review Board.
STEP 8B—If an Independent Review is not requested, send the original of the appraisal to the Ranking Official.

STEP 9—PERFORMANCE REVIEW BOARD: Appoint an Independent Executive Reviewer, if requested by the Senior Executive, within two work days. (Mandatory, if requested. Insert name, position title, and organization below.)

INDEPENDENT EXECUTIVE APPOINTED	POSITION TITLE	ORGANIZATION

STEP 10—INDEPENDENT EXECUTIVE REVIEWER: Conduct review within five workdays of assignment. (Mandatory). Indicate below whether you agree or disagree with the supervisor's recommended rating and why (Use additional pages if necessary). Place recommended summary rating, any recommended pay level change, reassignment or removal action in **STEP 10 CONTINUED**, on the Summary Page.

NRC FORM 351
(2-80)
NRCM, 1152

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES)
PERFORMANCE PLANNING AND APPRAISAL

(Reference NRC Form 351A "Summary of SES Performance Appraisal Steps" for Privacy Act Statement)

SENIOR EXECUTIVE - TYPED/PRINTED NAME: Victor Stello, Jr.
SIGNATURE:
TITLE: Director
ORGANIZATION: Office of Inspection and Enforcement
RATING PERIOD: FROM 10/1/80 TO 6/30/81
CAREER APPOINTEE: ☒ YES ☐ NO

STEP 1 - DEVELOP CRITICAL ELEMENT/SUBELEMENT *(Senior Executive and Supervising Executive must develop jointly)*
SUPERVISING EXECUTIVE - TYPED/PRINTED NAME: William J. Dircks
TITLE: Executive Director for Operations
SIGNATURE:
DATE: 1/1/81

STEP 3 - REVIEW/APPROVAL OF PERFORMANCE PLAN *(To be completed after Steps One and Two)*
SECOND LEVEL SUPERVISOR - TYPED/PRINTED NAME:
TITLE:
SIGNATURE:
DATE:

(Check appropriate box under performance appraisal) O – Outstanding E – Excellent S – Fully Successful M – Minimally Satisfactory U – Unsatisfactory

A. PROGRAM GOAL(S) *(At least one is mandatory)*	STEP 2 - IDENTIFY PERFORMANCE STANDARDS/EXPECTED RESULTS *(Senior Executive and Supervising Executive to develop jointly)*	STEP 4 - PERFORMANCE APPRAISAL - SUPERVISING EXECUTIVE NARRATIVE APPRAISAL OF ACHIEVEMENTS	O	E	S	M	U
(1) Specific Program Goal Critical Element							
a. Inspection and Enforcement	Complete defined inspection programs to establish, maintain and improve safety in operating facilities, facilities under construction and other assigned areas. Re-evaluate, in concert with appropriate licensing offices, the inspection manual so that inspection areas, schedules and frequencies are consistent with agency priorities and resources.	Inspection programs being carried out in excellent manner. Essential safety priorities are being met. However, reevaluation of inspection manual is proceeding more slowly than desired. More effort should be made to focus resources on highest priority safety needs and reduce resource outlays on lower order requirements.		X			
	Take proper and timely enforcement action as prescribed by NRC enforcement policy.	Almost one-third of the 33 elevated enforcement actions were issued 30 or more days after inspection reports. This is a generally successful level.		X			
		PERFORMANCE RATING:		X			

A GRAM GOAL – (Continued)	O – Outstanding E – Excellent S – Fully Successful	M – Minimally Satisfactory U – Unsatisfactory	PERFORMANCE APPRAISAL				
	PERFORMANCE STANDARDS/EXPECTED RESULTS	NARRATIVE APPRAISAL OF ACHIEVEMENTS	O	E	S	M	U
(2) Specific Program Goal Critical Element a. Special Emphasis Programs	Apply management attention to insure that schedules are met and goals are attained for the following special emphasis areas: Resident Inspection Program, Performance Appraisal Program, Independent Verification, Qualification of Safety Related Equipment, TMI Action Plan, Emergency Preparedness.	Program progress is satisfactory although PAT and QSRE programs are not yet complete. Emergency preparedness activities need close supervision to keep scope under control.		X			
		PERFORMANCE RATING:		X			

B MANAGEMENT EFFECTIVENESS GOALS (Items a – e are mandatory)	PERFORMANCE STANDARDS/EXPECTED RESULTS	NARRATIVE APPRAISAL OF ACHIEVEMENTS	PERFORMANCE APPRAISAL O	E	S	M
3. Planning and Organizing (mandatory)	Plan and develop office budget in accordance with established instructions and deadlines.	Met budget submission goals. Budget was developed with due regard for total agency need, not merely I&E.		X		
	Work with other program offices to resolve inter-office problems. Where you are unable to resolve such problems, resolution should not be protracted but brought to the attention of the EDO to facilitate a resolution.	Excellent practice of keeping EDO informed of significant issues and allowing time for EDO contribution to major decision area.		X		
	React responsively to interoffice coordination needs. Bring other offices in early and respond promptly to coordination needs.				X	
	Maintain programs for both short and long-term planning and organization of staff to accomplish routine and reactive assignments. Adjustments of plans and organization to meet needs should be minimized by built-in flexibility.				X	
Timeliness of Work or Product (mandatory)	Work implemented in a sufficiently timely manner to meet established deadlines and program objectives. When deadlines cannot be met with due regard to quality of work, prompt notice given to appropriate level of management.				X	
Selection and Development of Staff (mandatory)	Fill vacancies expeditiously to insure that work force on board is kept up to authorized level.	Staffing of regional offices had some problems in area of appropriate distribution of resources. One Region was overcommitted and another Region undercommitted.			X	
	Office staffing responds to the need for cross fertilization between NRC offices and improvement in quality of staff.				X	
	Demonstrable effort to reduce grade-average level.	HQ grade average is high but office has excellent system to reduce and control grade average.		X		
	Insure those selected as resident inspectors meet high standards and are properly trained and developed.	Generally met the challenge of this difficult program.		X		

I. MANAGEMENT EFFECTIVENESS GOALS (Items a - e are mandatory)	PERFORMANCE STANDARDS/EXPECTED RESULTS	NARRATIVE APPRAISAL OF ACHIEVEMENTS	PERFORMANCE APPRAISAL O	E	S	M	U
d. Resource Utilization (mandatory)	Resources expended at a rate which allows efficient use with a minimum of unobligated year-end funds.				X		
	Interface with DUTS to assure effective accounting of resource expenditure.						
	Resources should be expended in a manner which anticipates demands and distributes workload to all levels of staff effectively.				X		
	Develop innovative approaches to accomplishing routine or new workload without requiring additional resources.			X			
	Pay particular attention to resource utilization and program priorities so as to accomplish program goals without need for requesting increases in resources.			X			
Equal Employment and Affirmative Action Efforts (mandatory)	The office should at least maintain its current EEO profile, with an eye toward improvements in occupations where there is underrepresentation of women and minorities. A significant effort should be undertaken to meet EEO goals as specified in the fiscal year 1981 EEO Affirmative Action Plan.	Hiring situation this year has led to uncertainties. Effort shown in nuclear engineering and health physics hiring. Some regional difficulties noted. Emphasis in this area is necessary. Noted are payoffs in getting additional women into non-traditional jobs e.g., resident inspectors.		X			
	Managers should cooperate with EEO-related efforts, such as attempts to create DARE-type positions, and encourage staff members to participate in the upward mobility program.				X		
	All employees should be treated fairly and equitably for consideration of job assignments, promotions and job placement. Following good human relations and personnel practices should minimize grievances.				X		

B. MANAGEMENT EFFECTIVENESS GOALS (Items a – e are mandatory)	PERFORMANCE STANDARDS/EXPECTED RESULTS	NARRATIVE APPRAISAL OF ACHIEVEMENTS	[illegible]	[illegible]	S	[illegible]	[illegible]
f. Commission Papers	Develop well-organized, clear, and concise Commission papers. Focus attention on significant issues presented in papers. Include resource impacts of proposed actions and recommondations concerning whether resource needs should be accommodated by reprogramming or included in budget requests.	Successful in this area.			X		
	Exercise judgment in forwarding information to the Commission in order to reduce unnecessary paper flow. When appropriate, use faily and weekly event reports.				X		
g. SES Appraisals	SES contracts, with subordinates, should be used as an effective management tool. Rating should reflect a discriminating view toward recording superior performance.	This office has done an excellent job in developing management systems to recognize good performances in SES grades.		X			
		PERFORMANCE RATING:		X			

OIE SES APPRAISAL SUMMARY

OIE SES MEMBER	RATING	RATED BY
R. DeYoung	Outstanding	V. Stello
J. Keppler	"	"
J. Sniezek	"	"
J. O'Reilly	Excellent	"
R. Engelken	"	"
B. Grimes	"	"
N. Moseley	"	"
L. Cobb	"	"
H. Thornburg	Fully Successful	"
K. Seyfrit	"	"
B. Grier	"	"
* D. Thompson	"	"
J. Taylor	Excellent	N. Moseley
J. Collins	"	K. Seyfrit & DeYoung
E. Jordan	"	J. Sniezek
J. Partlow	"	N. Moseley & NMSS
L. Higginbotham	"	H. Thornburg
S. Schwartz	Fully Successful	B. Grimes
J. Allan	"	B. Grier
W. Brown	"	H. Thornburg
S. Bryan	"	N. Moseley
** W. Reinmuth	"	J. Sniezek

* Reassignment to nonsupervisory position recommended.
** Reduction in ES level recommended.

C. INDIVIDUAL PERFORMANCE (items a - c are mandatory)	PERFORMANCE STANDARDS/EXPECTED RESULTS	NARRATIVE APPRAISAL OF ACHIEVEMENTS	PERFORMANCE APPRAISAL				
			O	E	S	M	
a. Initiative (mandatory)	Exercise sufficient foresight to address issues before problems become critical -- span of concern should not be limited to issues of only your immediate responsibility.				X		
	While initiatives should be directed mainly toward the policies and programs of your own office, efforts should impact constructively on the performance of other segments of the agency.			X			
b. Problem Solving (mandatory)	Give personal attention to problems where solution involves other offices.						
	When alternatives or solutions are presented to higher management, they should be clear and not require additional re-working. Unanticipated problems should almost never interfere with program goals.				X		

C. INDIVIDUAL PERFORMANCE (Items a – c are mandatory)	PERFORMANCE STANDARDS/EXPECTED RESULTS	NARRATIVE APPRAISAL OF ACHIEVEMENTS	PERFORMANCE APPRAISAL O	E	S	M
c. Interpersonal Skills (mandatory)	Interpersonal relationships with other Directors should support cooperative effort.				X	
	Develop skills for presenting the best image of NRC to the public, Congress, licensees, etc.			X		
	Develop interpersonal skills so as to deal with problems after benefit of reflection and with less aggressiveness.			X		
d. Task Force/Special Projects Assignments Support of Significant Ad Hoc Assignments (if applicable)	Give attention to Ad Hoc assignments, surfacing conflicts with other activities and resource implications rapidly and visibly.			X		
		PERFORMANCE RATING:		X		

STEP 4 – *(If not in)* **SUPERVISING EXECUTIVE** – As part of the performance appraisal process, will discuss with the Senior Executive being rated and may document, areas for future emphasis or training and development needs. In addition, the Supervising Executive will begin performance planning for the next rating period using a new copy of NRC Form 351	**SUPERVISING EXECUTIVE – SIGNATURE** William J Dircks	**DATE** 8/6/81	The Supervising Executive must recommend to the PRB removal from the SES or reassignment within SES for unsatisfactory rating. **RECOMMENDED SUMMARY RATING**

O	E	S	M	U
	X			

SUPERVISING EXECUTIVE – COMMENTS *(Use additional sheet if necessary)*

Overall performance was excellent, especially in light of the large number of difficult unforeseen problems. Good work has been done on the Resident Inspector program and development of PAT. Resource management requires continued emphasis in the future. Additional management attention must be given to routine operation of Emergency Planning to assure program is in line with management policies.

STEP 5 – I have reviewed and discussed my appraisal with my supervisor. My signature does not imply that I agree with the appraisal or rating. *(Return appraisal to supervisor)*

SENIOR EXECUTIVE – SIGNATURE *(Mandatory – Must be completed within 5 days of appraisal date)*	**DATE** 8/7/81	Check Appropriate Box: ☐ I request an independent executive review ☑ I do not request an independent executive review.

SENIOR EXECUTIVE – COMMENTS *(Optional)*

STEP 6 – SUPERVISING EXECUTIVE on receipt:

6a. Continue to Step 7 if independent review is requested, by forwarding to the PRB.

6b. If not, continue to Step 9 by forwarding to the ranking official

STEP 7 – PRB APPOINTS INDEPENDENT EXECUTIVE REVIEWER, IF REQUESTED BY SENIOR EXECUTIVE, WITHIN 2 WORK DAYS *(Mandatory, if requested) (Insert name in Step 8)*

STEP 8 – INDEPENDENT EXECUTIVE REVIEW *(Mandatory, if requested; must be completed within 5 work days of assignment and forwarded to Ranking Official)*

TYPED/PRINTED NAME *(Appointed by PRB)*	**POSITION TITLE**	**ORGANIZATION**

EXECUTIVE REVIEWER – SIGNATURE *(Mandatory)*	**DATE**	Check Appropriate Box: *(State reasons under comments)* ☐ I agree with appraisal and recommended summary rating. ☐ I disagree with appraisal and recommended summary rating.

COMMENTS – REASON FOR AGREEMENT/DISAGREEMENT WITH APPRAISAL

STEP 9 – RANKING OFFICIAL'S APPRAISAL OF SENIOR EXECUTIVE – MANDATORY *(Must be completed within 5 work days and forwarded to PRB for review)*

I rank this Senior Executive as follows: *(Check appropriate box)* ☐ Top 1% ☑ 2 - 6% ☐ 7 - 25% ☐ 26 - 50% ☐ Other ______

Consider for performance award: ☑ YES ☐ NO Consider for ranks: Meritorious – ☑ YES ☐ NO Distinguished – ☑ YES ☐ NO

TYPED/PRINTED NAME William J. Dircks	**POSITION TITLE AND ORGANIZATION** Executive Director for Operations, U.S. NRC	**SIGNATURE** William J Dircks	**DATE** 8/6/81

STEP 10 – PERFORMANCE REVIEW BOARD REVIEWS, EVALUATES, AND DOCUMENTS UNDER STEP 12 *(Mandatory)*

STEP 11 – PRB MAY CONDUCT ADDITIONAL REVIEW INCLUDING AN ORAL PRESENTATION OR REQUEST ADDITIONAL INFORMATION OR DOCUMENTATION *(Optional)*

STEP 12 - PRB RECOMMENDATIONS (Mandatory) Stello

RECOMMENDED SUMMARY RATING

Excellent

STEP 13 – RATING OFFICIAL/APPOINTING AUTHORITY DECISION (Mandatory)

SUMMARY RATING (If different from PRB, indicate reason)

Excellent

RECOMMENDATION (Check appropriate box) (*For Career Senior Executives only)	YES	NO	YES	NO	Indicate approval/disapproval of PRB recommendations by checking "yes" or "no" for each. (If "no" indicate action to be taken)
Bonus award $ 9,500 or % of basic pay (not to exceed 20% or statutory max. rate of Exec. Level I)	X			X	Recommend EDO consider $8000 award.
Incentive award (See NRCM Chapter 4154)		X	X		
Pay adjustments – ES to ES		X	X		
*Meritorious rank	X			X	
*Distinguished rank	X			X	
Retain in current position	X		X		
Reassign within SES		X	X		
Remove from SES		X	X		

COMMENTS (Comment, attach additional sheet, if needed)

COMMENTS

I accept the Commission's recommendation regarding bonus amount.

OCT 5 1981

William J. Dircks
Awarding Authority

CHAIRPERSON PRB – SIGNATURE

Daniel J. Donoghue

DATE 5/16/81

OTHER MEMBERS OF PRB – NAMES (Check appropriate box for each)	CAREER	NON-CAREER
Orman E. Bassett	X	
Thomas F. Carter	X	
Edson G. Case	X	
John G. Davis	X	
~~Richard C. DeYoung~~	X	
Daniel J. Donoghue	X	
Thomas F. Englehardt	X	
James P. Fitzgerald	X	
~~Clemens J. Heltemes~~		
~~James G. Keppler~~	X	
~~Thomas E. Murley~~		
~~Patricia G. Norry~~		
Denwood F. Ross	X	

NRC FORM 351
(4-80)
NRCM 4152

U.S. NUCLEAR REGULATORY COMMISSION

SENIOR EXECUTIVE SERVICE (SES) PERFORMANCE PLANNING AND APPRAISAL

(Reference NRC Form 351A "Summary of SES Performance Appraisal Steps" for Privacy Act Statement)

SENIOR EXECUTIVE TYPED/PRINTED NAME: VICTOR STELLO, JR.
SIGNATURE:
RATING PERIOD: FROM 4/1/80 TO 7/31/80
TITLE: Director
ORGANIZATION: Office of Inspection and Enforcement
CAREER APPOINTEE: ☒ YES ☐ NO

STEP 1 – DEVELOP CRITICAL ELEMENT/SUBELEMENT *(Senior Executive and Supervising Executive must develop jointly)*
SUPERVISING EXECUTIVE TYPED/PRINTED NAME: William J. Dircks
TITLE: Acting, Executive Director for Operations
SIGNATURE: W J Dircks
DATE: 4/9/80

STEP 3 – REVIEW/APPROVAL OF PERFORMANCE PLAN *(To be completed after Steps One and Two)*
SECOND LEVEL SUPERVISOR – TYPED/PRINTED NAME: John F. Ahearne
TITLE: Chairman
SIGNATURE: J F Ahearne
DATE: 5/1/80

A. PROGRAM GOAL(S) *(At least one is mandatory)*: PLEASE SEE ATTACHED

STEP 2 – IDENTIFY PERFORMANCE STANDARDS/EXPECTED RESULTS *(Senior Executive and Supervising Executive to develop jointly)*

(Check appropriate box under performance appraisal) O – Outstanding E – Excellent S – Fully Successful M – Minimally Satisfactory U – Unsatisfactory

STEP 4 – PERFORMANCE APPRAISAL – SUPERVISING EXECUTIVE NARRATIVE APPRAISAL OF ACHIEVEMENTS

	STEP 2	STEP 4	O	E	S	M	U
(1) SPECIFIC PROGRAM GOAL CRITICAL ELEMENT Safety Responsibility	See Attachment 1, page 1, para. A.(1)	See Attachment 2, page 1, para. A.(1)	X				
a. SUBELEMENT *(If appropriate)*							
b. SUBELEMENT *(If appropriate)*							
c. SUBELEMENT *(If appropriate)*							
		PERFORMANCE RATING	X				
(2) SPECIFIC PROGRAM GOAL CRITICAL ELEMENT *(Optional)* Principal IE Programs							
a. SUBELEMENT *(If appropriate)* Resident Inspector Program	See Attachment 1, page 1, para. A.(2)a.	See Attachment 2, page 1, para. A.(2)a.		X			
b. SUBELEMENT *(If appropriate)* Inspection	See Attachment 1, page 1, para. A.(2)b.	See Attachment 2, page 1, para. A.(2)b.		X			
c. SUBELEMENT *(If appropriate)* Investigation	See Attachment 1, page 1, para. A.(2)c.	See Attachment 2, page 1, para. A.(2)c.		X			
		PERFORMANCE RATING					

CONTINUATION SHEET

	PERFORMANCE STANDARDS/EXPECTED RESULTS	NARRATIVE APPRAISAL OF ACHIEVEMENTS	PERFORMANCE APPRAISAL
A. PROGRAM GOAL			
(2) Principal IE Programs			
d. Enforcement	See Attachment 1, page 2, para. (2)d.	See Attachment 2, page 1, para. (2)d.	O
e. Event Followup	See Attachment 1, page 2, para. (2)e.	See Attachment 2, page 1, para. (2)e.	E
f. Emergency Response	See Attachment 1, page 2, para. (2)f.	See Attachment 2, page 2, para. (2)f.	E
g. Performance Assessments	See Attachment 1, page 2, para. (2)g.	See Attachment 2, page 2, para. (2)g.	S
		PERFORMANCE RATING	E

A PROGRAM GOAL – (Continued)	O Outstanding E Excellent S Fully Successful M Minimally Satisfactory U – Unsatisfactory		PERFORMANCE APPRAISAL				
	PERFORMANCE STANDARDS/EXPECTED RESULTS	NARRATIVE APPRAISAL OF ACHIEVEMENTS	O	E	S	M	U
(3) SPECIFIC PROGRAM GOAL CRITICAL ELEMENT (Optional) Represent NRC	See Attachment 1, page 2, para. A.(3)	See Attachment 2, page 2, para. A.(3)		X			
a SUBELEMENT (If appropriate)							
b SUBELEMENT							
c SUBELEMENT							
(Use additional sheet, if necessary)		PERFORMANCE RATING		X			
B MANAGEMENT EFFECTIVENESS GOALS (Items a - c are mandatory)	PERFORMANCE STANDARDS/EXPECTED RESULTS	NARRATIVE APPRAISAL OF ACHIEVEMENTS	O	E	S	M	U
a PLANNING AND ORGANIZING	See Attachment 1, page 3, para. B.a.	See Attachment 2, page 2, para. B.a.		X			
b TIMELINESS OF WORK OR PRODUCT	See Attachment 1, page 3, para. B.b.	See Attachment 2, page 2, para. B.b.			X		
c SELECTION AND DEVELOPMENT OF STAFF	See Attachment 1, page 4, para. B.c.	See Attachment 2, page 2, para. B.c.		X			
d RESOURCE UTILIZATION	See Attachment 1, page 5, para. B.e.	See Attachment 2, page 2, para. B.d.			X		
e EQUAL EMPLOYMENT AND AFFIRMATIVE ACTION EFFORTS	See Attachment 1, page 4, para. B.d.	See Attachment 2, page 2, para. B.e.			X		

O – Outstanding E – Excellent S – Fully Successful M – Minimally Satisfactory U – Unsatisfactory

B MANAGEMENT EFFECTIVENESS GOALS (Continued)	PERFORMANCE STANDARDS/EXPECTED RESULTS	NARRATIVE APPRAISAL OF ACHIEVEMENTS	PERFORMANCE APPRAISAL O	E	S	M	U
f ADDITIONAL SUBELEMENT (If appropriate) N/A							
g ADDITIONAL SUBELEMENT (If appropriate) N/A							
		PERFORMANCE RATING			X		

C INDIVIDUAL PERFORMANCE (Items a - c are mandatory)	PERFORMANCE STANDARDS/EXPECTED RESULTS	NARRATIVE APPRAISAL OF ACHIEVEMENTS	O	E	S	M	U
a INITIATIVE PLEASE SEE ATTACHED	See Attachment 1, page 6, para. C.a.	See Attachment 2, page 3, para. C.a.		X			
b PROBLEM SOLVING	See Attachment 1, page 6, para. C.b.	See Attachment 2, page 3, para. C.b.		X			
c INTERPERSONAL SKILLS	See Attachment 1, page 6, para. C.c.	See Attachment 2, page 3, para. C.c.					
d TASK FORCE/SPECIAL PROJECTS ASSIGNMENTS (If applicable)							
e ADDITIONAL SUBELEMENT (If appropriate)							
f ADDITIONAL SUBELEMENT (If appropriate)							
		PERFORMANCE RATING		X			

[illegible]

CRITICAL ELEMENT	UNSATISFACTORY	FULLY SATISFACTORY	OUTSTANDING
(1) Safety Responsibility	There is little apparent recognition that safety is the foremost overriding responsibility that should guide management and performance of the office.	A basic characteristic of approach to assigned responsibilities is complete acceptance of the principle that a foremost, overriding responsibility is the establishment, maintenance and improvement of safety in operating facilities, facilities under construction, safeguards matters, and in other assigned areas. This recognition of safety as a dominant responsibility is inherent in directions to staff and interactions with higher management.	A basic characteristic of approach to assigned responsibilities is complete acceptance of the principle that a foremost, overriding responsibility is the establishment, maintenance and improvement of safety in operating facilities, facilities under construction, safeguards matters, and in other assigned areas. This recognition of safety as a dominant responsibility is inculcated in most of staff and in their interactions with higher management.
(2) Principal IE Programs			
a. Resident Inspector Program	Fail to assign Senior Resident Inspector or equivalent, meeting minimum qualifications, to at least 65% of the eligible sites by June 7, 1980 and to have plan for full implementation of the program for at least 65% of the eligible sites by September 30, 1980.	Assign Senior Resident Inspector or equivalent, meeting minimum qualifications or granted waiver, to 80% of the eligible sites by June 7, 1980, and have plan for full implementation of the program at 80% of the eligible sites by September 30, 1980.	Assign Senior Resident Inspector or equivalent, meeting minimum qualifications or granted waiver, to 90% of the eligible sites by June 7, 1980, and have plan for full implementation of the program at 90% of the eligible sites by September 30, 1980.
b. Inspection	Complete less than 40% of the defined inspection program requirements in all program areas.	Complete 55% of the defined inspection program requirements in all program areas except where adjustments are necessary to meet higher priority inspection requirements (bulletin followup, NRR Order followup, etc.) in accordance with EDO or Commission and direction.	Complete 70% of the defined inspection program requirements in all program areas except where adjustments are necessary to meet higher priority inspection requirements (bulletin followup, NRR Order followup, etc) in accordance with EDO or commission guidance and direction.
c. Investigation	Develop specific investigation plans and initiate field investigation effort within 30 days for less than 50% of those cases identified as requiring investigative effort.	Develop specific investigation plans and initiate field investigation effort within 30 days for 65% of those cases identified as requiring investigative effort.	Develop specific investigation plans and initiate field investigation effort within 30 days for 85% of those cases identified as requiring investigative effort.

CRITICAL ELEMENT	UNSATISFACTORY	FULLY SATISFACTORY	OUTSTANDING
d. Enforcement	Take proper and timely enforcement action as prescribed in enforcement criteria for less than 65% of the cases identified as requiring corrective action by the licensee.	Take proper and timely enforcement action as prescribed in applicable enforcement criteria for 80% of the cases identified as requiring corrective action by the licensee.	Take proper and timely enforcement action as prescribed in applicable enforcement criteria for 90% of the cases identified as requiring corrective action by the licensee.
e. Event Followup	Frequently fail to evaluate licensee notifications and reports of events received in the Regional or Headquarter's offices and initiate action which is in accordance with established guidance.	Evaluates licensee notifications and reports of events and initiates action which, in most cases, is in accordance with established guidance.	Evaluates licensee notifications and reports of events and initiates action which, with few exceptions, is in accordance with established guidance.
f. Emergency Response	Establish and maintain a defined system for the Regional and Headquarter's Offices for managing response which fails to meet established guidelines and does not include adequate provisions for an emergency response center, communication equipment, appropriate material (P&ID's, photographs, charts, etc.) and written procedures.	Establish and maintain a defined system for the Regional and Headquarter's Offices for managing response to licensee emergencies which generally meets established guidelines and includes provisions for an emergency response center, communication equipment, appropriate material (P&ID's, photographs, charts, etc.) and written procedures.	Establish and maintain a defined system throughout IE for managing response to licensee emergencies which with few exceptions meets established guidelines and includes provisions for an emergency response center, communication equipment, appropriate material (P&ID's, photographs, charts, etc.) and written procedures.
g. Performance Assessments	Fail to continue efforts to develop and implement a plan for conducting regular and staff assessments of licensee performance with respect to safety and environmental protection.	Continue efforts to develop and implement a plan for conducting regular assessments of licensee and staff performance with respect to safety and environmental protection.	Increases aggressive efforts to develop and implement a plan for conducting regular assessments of licensee and staff performance with respect to safety and environmental protection.
(3) Represent NRC in Contacts with other Federal Agencies, State & Local Officials and the Public	Fails to participate or to encourage staff to participate in developing and presenting response to inquiries from the public, representatives of other agencies, & state & local officials. Fails to cooperate with the Officesof Public Affairs & State Programs to ensure dissemination of information when need arises.	Actively participates and encourages staff to participate in developing and presenting response to inquiries from the public, representatives of other agencies, and state and local officials. Cooperates with Offices of Public Affairs and State Programs to ensure dissemination of information as need arises in a manner generally acceptable to those Offices and to IE management.	Consistently demonstrates leadership in representing NRC and in encouraging staff to represent NRC in responding to inquiries from the public, representatives of other agencies and state and local officials. Cooperates with Offices of Public Affairs and State Programs to ensure dissemination of information as need arises and in a manner fully acceptable to those Offices and to IE management.

B. MANAGEMENT EFFECTIVENESS GOALS

	CRITICAL ELEMENT	UNSATISFACTORY	FULLY SATISFACTORY	OUTSTANDING
a.	Planning & Organizing	Little evidence of planning and organization of staff. Staff appears disorganized with little cohesiveness or direction. Meets infrequently (once or twice each calendar quarter) with directly supervised subordinates who appear to have little awareness of organizational objectives, assignments and priorities. Adjustments to plans and organization are developed, but generally only upon specific direction to do so, and are usually found to be unacceptable by direct supervisor. Budget development work is timely.	Provides programs for short and long term planning and organizing of staff to accomplish routine, reactive and emergency response assignments in an acceptable manner. Meets frequently (at least twice a month with same location personnel and twice quarterly with other personnel)with directly supervised subordinates so that they are aware of organizational objectives, assignments and priorities. Proposed adjustments of plans and organization to meet changed assignments or needs are sound and generally acceptable to direct supervisor. Planning facilitates timely development of budget.	Provides programs for short and long-term planning and organizing of staff to accomplish routine, reactive and emergency response assignments in an obviously superior manner. Interactions with directly supervised subordinates are at least as frequent as for "fully successful" standard and are of such quality that subordinates are not only aware of organizational objectives, assignments and priorities but are knowledgeable and supportive of bases, therefore, Adjustments of plans and organization to meet changed assignments or needs are infrequent because of flexibility in established plans and organization to accommodate many changes, but when required are always sound and acceptable to direct supervisor. Budget development work is acceptable and submitted prior to schedule deadlines.
	Timeliness	Frequently (at least half the time) misses established deadlines for assigned action items and/or work, and frequently (again, at least half the time) extensive revision of words is needed.	Generally (at least 75% of time) meets established deadlines for assigned action items and/or work. Work generally (again, at least 75% of time) is accurate and complete requiring only minor revisions.	Can be relied upon almost without exception to produce extremely high quality work expeditiously - on or ahead of established deadlines; serves as an example to other staff elements in this areas.

INTENTIONAL
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B. MANAGEMENT EFFECTIVENESS GOALS (continued)

CRITICAL ELEMENT	UNSATISFACTORY	FULLY SATISFACTORY	OUTSTANDING
Selection and Development of Staff	Devotes little attention to staff selection without prodding from higher management; encounters frequent problems in recruitment and hiring; selections show little exercise of judgment. New employees frequently remain confused about their roles for extended periods and are integrated only slowly. Appears to be indifferent to exceptional employee performance. Exerts little effort to develop staff capabilities. No apparent efforts are made to control average grade level.	Routinely completes selection of new staff within 30 days of receipt of list of qualified candidates; selections are generally good. New employees are promptly oriented to assure their expeditious integration at the full performance level. Makes effective use of Incentive Awards to recognize exceptional employee performance. Development of staff capabilities is generally well thought out, strongly biased to correction of career impediments especially those identified in performance appraisals, and actively pursued. Reasonable efforts are made to control average grade level.	Anticipates vacancies and moves promptly and aggressively to acquire replacements for vacancies; makes selections promptly (within two weeks) of receipt of list of qualified candidates; selections are exceptionally good. Orientation and integration of new employees is exceptionally smooth and effective with essentially no adverse impact on overall staff effectiveness. Ingenious and innovative in providing recognition of exceptional employee performance, including effective use of Incentive Awards Program. Exceptionally effective in developing staff capabilities. Effective efforts are made to control average grade levels.
Equal Employment and Affirmative Action Efforts	Is either not knowledgeable of NRC policy on equal employment opportunities and affirmative action programs or appears indifferent to implementing those policies. Little evidence exists to indicate that, to the extent opportunities permitted, serious efforts were made to recruit, select and develop women and minority employees at all organizational levels.	Actions in recruitment and selections and in development of personnel appropriately reflect proper consideration of NRC policy on equal employment opportunities and affirmative action programs. Clear evidence is available that, to the extent opportunities permitted, strong efforts were made to increase the numbers of women and minorities at all levels in organization, and to carefully consider training opportunities to correct areas where improvements are needed for career progress.	Displays exceptional capability in this area and, to the extent opportunities permitted, was instrumental in attracting women and minority candidates, in increasing the numbers of women and minority personnel in the organization, and in implementing effective programs directed towards their career development potential.

B. MANAGEMENT EFFECTIVENESS GOALS (continued)

CRITICAL ELEMENT	UNSATISFACTORY	FULLY SATISFACTORY	OUTSTANDING
e. Resource Utilization	Work flow is haphazard and undisciplined; little evidence available to indicate staff accountability for specific actions. Frequent maldistribution of workload leading to ineffective and/or slow productivity. Displays little interest in or capability to accommodate changing priorities; frequently slow to identify need for changes in staffing levels to meet changing priorities; responsiveness to need for budget planning data thereon is slow and/or superficial.	Routinely assigns work in a manner to assure effective use of available resources; as needed, restructures staff responsibilities to meet demands. Identifies need for adjustments in staffing levels to meet changing priorities and communicates these to higher management clearly, cogently and in a timely fashion.	Anticipates demands extremely well and distributes workload effectively and equitably, consistent with staff capabilities; staff responds to heavy demands with ease and dispatch and maintains high productivity of very high quality work products. Exceptional ability to accommodate changing priorities Planning for changing resource needs as part of budget preparation is well thought out and cogently presented in a timely fashion.

C. INDIVIDUAL PERFORMANCE CRITICAL ELEMENT	UNSATISFACTORY	FULLY SATISFACTORY	OUTSTANDING
a. Initiative	Displays little or no initiative. Frequent direction from higher management levels is needed to initiate actions needed to prevent problems, to limit their impact, or develop measures for prompt resolution.	Takes initiative in developing policy, implementing programs and establishing procedures to integrate and standardize practices throughout the Office. Practices are generally consistent with supervisor's philosophy; takes action independently and effectively to improve performance of the organization.	Initiative is clearly of superior quality. While directed mainly at the policies and programs of involved organization, on many occasions it involves considerations impacting in a constructive manner on the performance of other segments of the agency. No advice from higher management is needed to initiate actions. Results are in nearly all instances acceptable to supervisor.
b. Problem-Solving	Displays little or no ability to interpret or solve problems. Frequent advice and assistance from higher management is needed to complete assignments. Response to unanticipated problems frequently interferes with accomplisment of program goals.	Is adept at anticipating problems and at defining critical issues, obtaining whatever assistance is needed to address the critical issues. Reaches a resolution that is timely and acceptable to the supervisor in at least 75% of assignments. Generally responds to unanticipated problems with only minimal impact on accomplishment of program goals.	Ability to anticipate and solve problems is clearly of superior quality. A set of alternatives or a specific recommended solution is developed in each instance and clearly presented. The result is almost always acceptable to the supervisor. Unanticipated problems almost never interfere with accomplishment of program goals.
c. Interpersonal Skills	Has little talent for staff motivation. Frequently requires assistance of higher management to resolve differences of opinion. Is frequently criticized by employees, peers, union representatives, outside agencies, or organizations, or other offices for inefficient performance.	Demonstrates ability to motivate most of those supervised to perform in fully acceptable manner. Generally resolves differences of opinion without the need for involvement of higher management. Is effective in relations with employees, peers, union representatives, management of other offices, and outside agencies and organizations.	Motivates large majority of those supervised to exceed fully acceptable levels of performance in many areas. Very rarely requires assistance of higher management to resolve differences of opinion. Is often commended by peers, union representatives, other offices, and by outside agencies and organizations for abilities.

g. Performance Assessments	Effort has continued to implement and improve (1) the Systematic Appraisal of Licensee Performance, or SALP program, and (2) the Performance Appraisal Team or PAT program.	PERFORMANCE RATING	S E
(3) Represent NRC	Mr. Stello has done a highly commendable job of representing the NRC. His ability to translate highly complex technical jargon into understandable terms has contributed to his acceptance as a knowledgeable source of reliable information and views by those within and outside the agency.		E
		PERFORMANCE RATING	E

B. MANAGEMENT EFFECTIVENESS GOALS

a. Planning and Organizing	Mr. Stello has demonstrated an aptitude for short and long-term planning and for organizing the staff to implement plans. Assignments to special Task Forces or interim organizations are, with infrequent exceptions, successfully concluded without severe disruptions to the normal functioning of the organization.		E
b. Timeliness of Work or Product	The Office has had problems in producing papers, proposals and reports on a timely basis. In the area of enforcement and other direct regulatory matters, this Office does produce material on time.		S
c. Selection and Development of Staff	Mr. Stello has a proven reputation as a superior selector of technical and management talent. He has done well in recruiting and filling office vacancies. He does the difficult job in identifying sub-marginal performances where other Office Directors have evaded this task.		E
d. Resource Utilization	Improvements in resource utilization are necessary to accomplish increased levels of high priority work without asking for major increases in resources. This will require innovative and flexible management attitude to constantly search out and eliminate outmoded or relatively less important tasks within the Office.		S
e. Equal Employment and Affirmative Action Efforts	Mr. Stello's performance in this area meets the fully successful level.		S
		PERFORMANCE RATING	S

C. INDIVIDUAL PERFORMANCE

a. Initiative	Personal initiative is a basic ingredient of Mr. Stello's personality. On his own volition he initiates action on programs and policies, which at times exceed the ability of his staff to address promptly. However, they are seldom forgotten and with time, are addressed and concluded with constructive impacts.	E
b. Problem Solving	Mr. Stello's ability to anticipate and solve safety-related technical problems has been clearly demonstrated to be excellent. It is clear, however, that the major management problem facing OIE requires finding new ways of utilizing finite resources to solve the problems at hand.	E
c. Interpersonal Skills	Mr. Stello's forcefulness and innate agressiveness sometimes inhibit immediate rapport. However, his honesty and willingness to consider other sides of an issue results in productive compromise.	S
	PERFORMANCE RATING	E

ATTACHMENT 2

A. PROGRAM GOALS

(1) Safety Responsibility	As a result of Mr. Stello's forceful pursuit of safety, his lower echelon managers are showing steady evidence of responding in the form of increased enforcement actions. Additional managerial effort will be required to translate fully the strong personal commitment to safety to all key management echelons of IE.	O
(2) Principal IE Programs	PERFORMANCE RATING	O
a. Resident Inspector Program	In large measure, the success of the office in meeting the stated objectives is due to Mr. Stello's personal commitment to the goal and his insistence on its achievement. Additional management focus is necessary to assign full-time residents rather than the use of "equivalent" region-based inspectors.	E
b. Inspection	A high percentage of the defined program requirements have been completed. Improvement is necessary in validating and prioritizing the inspection program requirements. The EDO and Director of IE have discussed programs to do full-scale review of inspection requirements in conjunction with other offices.	E
c. Investigations	Mr. Stello has placed exceptional emphasis on quality rather than quantity. The results of the South Texas and Surry investigations are two of several available examples of investigations of superior quality.	E
d. Enforcement	Mr. Stello's personal insistence on a strong, vigorous and effective enforcement policy is clearly evident from the extraordinary increase in elevated enforcement actions. Constant demands for superior quality and consistency has been effective.	O
e. Events Followup	Mr. Stello is consistent in his demands for superior efforts in the types of evaluations addressed in this subelement, and for prompt effective actions that follow from these evaluations.	E
f. Emergency Response	Mr. Stello has placed a high priority on improving the incident response capability of the agency. He has forcefully pursued initiatives to upgrade the facilities, procedures, and equipment of the agency and its licensees to respond to emergencies.	E

Stello

STEP 12 – PRB RECOMMENDATIONS *(Mandatory)*

RECOMMENDED SUMMARY RATING

Excellent

STEP 13 – RATING OFFICIAL/APPOINTING AUTHORITY DECISION *(Mandatory)*

SUMMARY RATING *(If different from PRB, indicate reason)*

Commission rating: Excellent

RECOMMENDATION *(Check appropriate box)* (*For Career Senior Executives only)	YES	NO	YES	NO	Indicate approval/disapproval of PRB recommendations by checking "yes" or "no" for each. (If "no" indicate action to be taken)
Performance award $ or % of basic pay *(not to exceed 20% or statutory max. rate of Exec. Level II)*		x	X	.	
Incentive award *(See NRCM Chapter 4154)*		x	X		
Pay adjustment – ES to ES		x	X		
*Meritorious rank *No award is recommended because Meritorious rank was granted this year. Consider further for next year.		x	X		
*Distinguished rank					
Retain in current position	x		X		
Reassign within SES		x	X		
Remove from SES		x	X		

COMMENTS *(Optional: attach additional sheet, if needed)*

The PRB notes the following procedural error: Recommended summary rating inconsistent with rating on one critical element. The PRB reviewed the plan and appraisal in relation to plans and appraisals of other NRC senior executives and recommends a summary rating of excellent.

CHAIRPERSON PRB – SIGNATURE
D. J. Donoghue

DATE
9/12/80

OTHER MEMBERS OF PRB – NAMES *(Check appropriate box for each)*	CAREER	NON-CAREER
E. G. Case	x	
J. G. Davis	x	
J. A. Fitzgerald	x	
E. J. Hanrahan	x	
T. E. Murley	x	
P. G. Norry	x	
R. G. Smith	x	

COMMENTS

See attached for Commissioners' signatures

RATING OFFICIAL/APPOINTING AUTHORITY – SIGNATURE *(Mandatory)*
J F Ahearne

DATE
10/21/80

12 PRB RECOMMENDATIONS (Mandatory)

OMMENDED SUMMARY RATING

Excellent

STEP 13 – RATING OFFICIAL/APPOINTING AUTHORITY DECISION (Mandatory)

SUMMARY RATING (If different from PRB, indicate reason)

OK VS.

RECOMMENDATION (Check appropriate box) (*For Career Senior Executives only)	YES	NO	YES	NO	Indicate approval/disapproval of PRB recommendations by checking "yes" or "no" for each. (If "no", indicate action to be taken)
rformance award $* or % of basic pay (not to exceed 20% or statutory max. rate of Exec. Level I)		x	X		
ncentive award (See NRCM Chapter 4154)		x	X		
y adjustments – ES to ES		x	X		
ritorious rank*		x	X		
tinguished rank					
etain in current position	x		X		
ssign within SES		x	X		
emove from SES		x	X		

*No award is recommended because Meritorious rank was granted this year. Consider further for next year.

MMENTS (General; attach additional sheet, if needed)

The PRB notes the following procedural error: Recommended summary rating inconsistent with rating on one critical element. The PRB reviewed the plan and appraisal in relation to plans and appraisals of other NRC senior executives and recommends a summary rating of excellent.

COMMENTS

IRPERSON PRB – SIGNATURE D. J. Donoghue	ORIGINAL SIGNED BY Daniel J. Donoghue	DATE 9/12/80

HER MEMBERS OF PRB – NAMES (Check appropriate box for each)	CAREER	NON-CAREER
E. G. Case	x	
J. G. Davis	x	
J. A. Fitzgerald	x	
E. J. Hanrahan	x	
T. E. Murley	x	
P. G. Norry	x	
R. G. Smith	x	

RATING OFFICIAL/APPOINTING AUTHORITY – SIGNATURE (Mandatory)

DATE

P 12 PRB RECOMMENDATIONS (Mandatory)

COMMENDED SUMMARY RATING

Excellent

RECOMMENDATION (Check appropriate box) (*For Career Senior Executives only)	YES	NO
Performance award* $ or % of basic pay (not to exceed 20% or statutory max. rate of Exec. Level II)		x
ncentive award* (See NRCM Chapter 4154) $		x
y adjustments – ES to ES		x
ritorious rank *No award is recommended because Meritorious rank was granted this year. Consider further for next year.		x
stinguished rank		
Retain in current position	x	
assign within SES		x
move from SES		x

MMENTS (Optional, attach additional sheet, if needed)

The PRB notes the following procedural error: Recommended summary rating inconsistent with rating on one critical element. The PRB reviewed the plan and appraisal in relation to plans and appraisals of other NRC senior executives and recommends a summary rating of excellent.

IRPERSON PRB – SIGNATURE
D. J. Donoghue
ORIGINAL SIGNED BY
Daniel J. Donoghue

DATE
9/12/80

HER MEMBERS OF PRB – NAMES (Check appropriate box for each)	CAREER	NON-CAREER
E. G. Case	x	
J. G. Davis	x	
J. A. Fitzgerald	x	
E. J. Hanrahan	x	
T. E. Murley	x	
P. G. Norry	x	
R. G. Smith		

STEP 13 – RATING OFFICIAL/APPOINTING AUTHORITY DECISION (Mandatory)

SUMMARY RATING (If different from PRB, indicate reason)

Excellent

YES	NO	Indicate approval/disapproval of PRB recommendations by checking "yes" or "no" for each. (If "no" indicate action to be taken)
X		
X		
X		
X		
X		
X		
X		

COMMENTS

RATING OFFICIAL/APPOINTING AUTHORITY – SIGNATURE (Mandatory)

DATE
10/12/80

12 PRB RECOMMENDATIONS *(Mandatory)*

OMMENDED SUMMARY RATING

Excellent

RECOMMENDATION *(Check appropriate box)* *(*For Career Senior Executives only)*	YES	NO	YES	NO	Indicate approval/disapproval of PRB recommendations by checking "yes" or "no" for each. *(If "no" indicate action to be taken)*
rformance award* $ or % of basic pay *(not to exceed 20% or statutory max. rate of Exec. Level I)*		x	Y		
ntive award *(See NRCM Chapter 4154)*		x	X		
y adjustments – ES to ES		x	X		
ritorious rank *No award is recommended because Meritorious rank was granted this year. Consider further for next year.		x	X		
stinguished rank					
Retain in current position	x		X		
steps within SES		x	X		
move from SES		x	X		

MENTS *(Optional, attach additional sheet, if needed)*

The PRB notes the following procedural error: Recommended summary rating inconsistent with rating on one critical element. The PRB reviewed the plan and appraisal in relation to plans and appraisals of other NRC senior executives and recommends a summary rating of excellent.

AIRPERSON PRB – SIGNATURE ORIGINAL SIGNED BY Daniel J. Donoghue

D. J. Donoghue

DATE 9/12/80

HER MEMBERS OF PRB – NAMES *(Check appropriate box for each)*	CAREER	NON-CAREER
E. G. Case	x	
J. G. Davis	x	
J. A. Fitzgerald	x	
E. J. Hanrahan	x	
T. E. Murley	x	
P. G. Norry	x	
R. G. Smith	x	

STEP 13 – RATING OFFICIAL/APPOINTING AUTHORITY DECISION *(Mandatory)*

SUMMARY RATING *(If different from PRB, indicate reason)*

Excellent

COMMENTS

RATING OFFICIAL/APPOINTING AUTHORITY – SIGNATURE *(Mandatory)*

DATE 9/24/80

[Whereupon, at 5 p.m., the committee adjourned, subject to the call of the Chair.]

NOMINATION OF VICTOR STELLO, JR., TO BE THE ASSISTANT SECRETARY OF ENERGY FOR DEFENSE PROGRAMS

THURSDAY, NOVEMBER 16, 1989

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC.

The committee met, pursuant to notice, at 2:07 p.m., in room SH-216, Hart Senate Office Building, Senator Jeff Bingaman presiding.

Present: Senators Nunn (chairman of the committee), Bingaman, Exon, Levin, Kennedy, Gore, Wirth, Warner, McCain, and Lott.

Committee staff members present: Arnold L. Punaro, staff director; Andrew S. Effron, general counsel; and Marie Fabrizio Dickinson, assistant chief clerk.

Professional staff members present: Sherri Wasserman Goodman, John J. Hamre, William E. Hoehn, Jr., and William H. Smith.

Minority staff members present: Patrick A. Tucker, minority staff director and counsel; Romie L. Brownlee, deputy staff director for the minority; Judith A. Freedman, George W. Lauffer, John E. Mansfield, and Durwood W. Ringo, Jr., professional staff members.

Staff assistants present: Barbara L. Braucht, Elizabeth Ann Harlow, Cindy Pearson, Melissa A. Ramsey, Debra A. Rice, and Mickie Jan Wise.

Committee members' assistants present: Jeffrey B. Subko, assistant to Senator Exon; William J. Lynn and Christopher E. Paine, assistants to Senator Kennedy; Edward M. McGaffigan, Jr., and John Gerhart, assistants to Senator Bingaman; Jefferson B. Seabright, assistant to Senator Wirth; James M. Bodner, assistant to Senator Cohen; Dudley L. Carlson, assistant to Senator Wilson; Anthony H. Cordesman, assistant to Senator McCain; Robert M. Soofer, assistant to Senator Gorton; and Charles G. Pearcy, assistant to Senator Lott.

OPENING STATEMENT OF SENATOR JEFF BINGAMAN, PRESIDING

Senator BINGAMAN. The committee will come to order. The committee meets this afternoon to continue the consideration of the nomination of Victor Stello, Jr., to be the Assistant Secretary of Energy for Defense Programs. The chairman has announced that the committee will meet tomorrow at noon in executive session to discuss how to proceed on certain pending nominations, including Mr. Stello's nomination.

This afternoon the committee will hear from several panels, some supporting and some opposing the nomination. The committee has contacted everyone—Members of Congress, individuals, and organizations—that has asked to testify on this nomination, and we will hear today from all those people with one exception.

I will let the staff explain why this one individual who has requested to testify will not appear on the panel today.

Are you in a position to do that, Sherri?

Ms. GOODMAN. Yes, Mr. Chairman. The individual whom the majority and minority counsel jointly recommended not be permitted to testify is Mr. Stephen Comley. Mr. Comley has been cited for contempt for failing to comply with the subpoena to produce the documents concerning an ongoing Nuclear Regulatory Commission investigation which is the subject of an allegation against the nominee, Mr. Stello.

Mr. Stephen Comley has stated, and I quote from his own press release, "Comley refuses to comply with the subpoena, has been fined thousands of dollars, and faces jail. Federal District Court Judge Keene ruled against Comley's argument that the NRC lacks the authority to issue a subpoena."

In light of Mr. Comley's own admission that he is in contempt of a court order to produce documents pertinent to the matters about which he wishes to testify and has outstanding fines of approximately $92,000 to date, we do not believe it is appropriate for him to be called as a witness in this proceeding.

The staff has confirmed that Mr. Comley is in contempt of court and faces fines of $1,000 per day from the Justice Department. The committee staff has met with Mr. Comley and has received information from him, and that information is available for review by any member.

If Mr. Comley has further information he wishes to provide, the committee stands ready to receive and to consider it.

Mr. TUCKER. Mr. Chairman, I might note for the record that the minority staff concurs with that, and both Senators Nunn and Warner have been briefed on all of the details of this matter.

Senator BINGAMAN. All right. That is the circumstance with regard to that potential witness.

The committee today will hear from the following witnesses: Congressman Kostmayer is not here right now. I understand he is coming and will be here in 20 or 30 minutes. He is the chairman of the Interior Subcommittee on General Oversight and Investigations, which has conducted a hearing on Nuclear Regulatory Commission investigations, including matters involving Mr. Stello. We will permit him to testify, of course, as soon as he arrives.

The panel we would call first today consists of Mr. Eric Fersht of Greenpeace, and Mr. Robert Pollard, a former NRC official, who is now employed by the Union of Concerned Scientists. If they would come forward, please.

The final panel we will hear from are witnesses supporting the nomination. They are Mr. Marcus Rowden, a Washington attorney and former NRC commissioner, and Mr. Lando Zech, who is a former chairman of the NRC.

Several other individuals who asked to testify and were invited to testify today were unable to attend. They are Mr. Robert Backus, the attorney for the Seacoast Antipollution League and a witness recommended by Senator Humphrey, Mr. Nick Carter of SANE-Freeze; Dr. John Ahearne, Chairman of the Advisory Committee on Nuclear Facility Safety and a former chairman of the NRC; and Mr. William Lee, of Duke Power. Their statements will be made part of the record today so that they can be reviewed before the committee take any action.

[The statements referred to follow:]

Statement by: Nick Carter, Executive Director
SANE/FREEZE: Campaign for Global Security

on the nomination of Victor Stello,
Jr. for the position of Assistant
Secretary for Defense Programs,
Department of Energy

SANE/FREEZE: Campaign for Global Security is one of the largest grassroots peace and justice organizations in the U.S. With more than 170,000 members in 35 states, we work to empower people so that they can make a difference in shaping the future of this country.

For the past year, our membership has indentified its concern over the Department of Energy's Weapons Plants as a major area of focus. We have, in particular, heard most loudly from our chapters in Georgia, South Carolina, Ohio, Colorado, Idaho and Washington State. After months of study and work with this issue SANE/FREEZE has reached a point where it is in touch with thousands of citizens surrounding these weapons facilities and with thousands more in other states who are genuinely concerned about the future activity of DOE.

Congress has been faced with many controversial ethical matters throughout the year of 1989. Many of these have attracted considerable attention from the press and the public. There is, very clearly, a rising sense of urgency and passion in the American public about our national values and priorities. This is particularly true in the area of national security, where the old definitions that have shaped policy for nearly 40 years are daily being proved as inadequate and, indeed, counterproductive. Nowhere is this more visible than the controversy surrounding America's nuclear weapons production facilities.

Thus, the appointment of the new Assistant Secretary for Defense Programs at the Department of Energy brings great debate. The crisis state of the weapons facilities, the environmental disaster they have caused and the question of need for new facilities are all part of this debate.

The Bush Administration has named Mr. Victor Stello for this position. Confirmation of that appointment is now before this committee.

On behalf of SANE/FREEZE and its membership I speak to oppose this nomination and call upon you to deny confirmation. We believe that Mr. Stello is the wrong man for the job. Indeed, given the fragile nature of our environmental situation, our threatened public health, and the rapidly changing nature of our national security we feel that his appointment is akin to letting a bull loose in a china shop.

As Assistant Secretary for Defense Programs, Stello's mission will be to restore an aging and troubled nuclear weapons production complex to operation. In this process, he will be confronted with maintenance and support of now-obsolete technologies, design and construction of new (and some unproven) technologies, a growing waste management crisis, constant scrutiny from peace and environment organizations, and the operation of three production reactors at the Savannah River site which have already been in use twenty years longer than their designers expected or intended. All of this will be happening in a time when the very need for continued production of nuclear weapons has been brought into serious question. These problems and others call for strong leadership; not merely bull-headed, aggressive corner cutting, but rather prudence and thoughtful consideration of the ramifications of each decision for both the short and long term. This position will have the ability to effect America's environment and security for decades.

The role of effective leadership and mangement cannot be underestimated. When Westinghouse took up the reins of Savannah River from DuPont, officials at Westinghouse cited the greatest problem at SRS as the poor management structure which was left behind by DuPont. Westinghouse has said in report after report that the tasks requiring the most attention at SRS are management tasks: thorough training, increased communication, assignment of priorities,and strong oversight and adminstration.

Concerns about mangement apply not only to Savannah River, but to the entire DOE weapons production complex. After literally decades of troubled operations, which have led to public condemnation of the entire nuclear weapons program, DOE now has a leader who has been forced to say that safety can no longer take a back seat to production. To this end, secretary Watkins' ten-point initiative to place safety on par with production is a positive first step, and SANE/FREEZE would like to commend Mr. Watkins for his recognition of the severity of the problems at hand. However, this commitment and even Mr. Watkins' best intentions are no guarantee that the management maladies which have plagued the Department will be automatically remedied, nor that the ten-point initiative will be successful. To accomplish such a huge and critical task requires new attitudes, new goals and objectives , new practices and -- in many cases -- new personnel.

Regrettably, Victor Stello has the ability to quickly extinguish any hope that the Watkins promises may have generated. It is true that a management structure is only as strong as its weakest link. And when, as in this case, the link is so high in the chain, it has the capacity to weaken thousands of links underneath. Placing Stello directly under Watkins would mean that the struggle for balancing safety and production would begin and end at the top.

The legacy of bull-headed and damaging leadership is Victor Stello's. Each member of this committee has been presented with testimony and evidence regarding Mr. Stello's questionable actions during his tenure at the Nuclear Regulatory Commission. Rather than elaborate yet again on the details of Mr. Stello's activities or inactivities in the past, SANE/FREEZE would like to point out the implications of what would happen if similiar policies took root in the nuclear weapons production complex.

Consider first the arena of materials production. DOE is laying the groundwork for one (and possibly two) new production reactors to replace the aging Savannah River facilities. Mr. Stello repreatedly overlooked serious material and construction problems at the CG&E Zimmer nuclear power plant. Despite over 600 allegations voiced by CG&E Zimmer employees and subcontractors, including inadequate welding and defective wiring, Stello said that there were no hardware problems at the plant (even though no interviews had been conducted and not a single weld had been inspected by NRC). What is more, a recommendation was made at one point to close the plant before it was even completed. This, too, was ignored. After $1.6 billion in expenditures, the construction shortcomings forced the Zimmer plant to be converted into a coal-fired powerplant.

If this were to happen to one of the proposed NPR's, the potential damage would be enormous. The environmental risks are always great; they are even greater at these heavily polluted sites which are now targeted for restarts before the previous pollution is cleaned up. The risks to staff continue and are only heightened. But, even more, public confidence in the entire system is at stake. The future of the plants is already in question. Poor management this level will only serve to spark the public to demand an immediate and permanent shut-down. With Victor Stello in charge this is not idle thinking.

When Mr. Stello was asked to handle the problems around TMI-2 he demonstrated a lack of concern that is directly related to the potential Savannah River restart. He was asked to review the lawsuit against Babcock and Wilcox, and Stello concluded that no information in the lawsuit should effect the restart of the second TMI reactor. Subsequently, an NRC panel found seven major issues with the management integrity there that made the restart problematic. Julian Greenspun of the Department of Justice stated that Stello felt that an investigation at TMI would be bad for operators' morale.

Clearly, Mr. Stello has shown he is prepared to sacrifce a great deal in the area of safety to gain other more short-sighted goals. In the rush to restart, he was myopic and unwilling to consider anything that might stand in his way. America's nuclear weapons production plants could not long withstand this management style without quickly adding fuel to the ugly fire that is already burning.

Health and safety, both for plant workers and for the public in general, are issues which are attracting more and more controversy. Each new development in the problems at Hanford, Rocky Flats, SRS, Fernald, and other locations force the public to question whether their government is genuinely concerned about the public welfare. Mr. Stello's track record in the Nuclear Pharmacy incident and in the Stepan Chemical waste dump suggest that he was willing to sacrifice the public welfare for the sake of the industry he was regulating.

In the Nuclear Pharmacy incident, Stello informed NPI officials that the sale of xenon-133 labeled "not for human use" to hospitals was not in violation of any NRC regulations, even though the Department of Justice had not completed its investigation of the matter and even though the sale was clearly in violation of both NRC regulations and NPI's license. Although the OIE under Stello confirmed that Stepan Chemical possessed an unauthorized radioactive waste burial site, OIE investigators opely discussed internal memos with Stepan Chemical attorneys, prompting the Department of Justice to abandon prosecution of the case.

DOE is now virtually drowning in its own radioactive waste -- a fact which may force Rocky Flats to close unless a site for waste disposal can be located soon. The problems which have plagued both the WIPP plant and the Yucca Mountain site have compounded this crisis. The United States is now facing millions upon millions of cubic meters of radioactive waste with no solution in sight. With increasing public concern over the OMB's $150 billion estimate for cleanup of the weapons production complex, the "point man" for Watkins' initiative must be prepared to devote as much energy to waste management and cleanup as to safety in plant operations. Mr. Stello's disregard for public welfare, safety, and the health of plant employees suggests that he would have an equally callous disregard for the waste management and environmental restoration problems in the future.

One incident is especially sobering in the context of the nuclear weapons production program. A fire at Brown's Ferry disabled many safety systems at the plant. As a result, the NRC developed regulations for shutdown of reactors in the event of fire. However, Stello and the utility companies met -- without a single NRC fire protection engineer in the conference -- to re-interpret the regulations. The regulations permit the utilities to interpret or even modify the standards without consulting NRC. No one needs to explain the absurdity of this action in the case of commercial nuclear power plants. However, the situation is even more grave at DOE, where the only three remaining production reactors -- all at SRS -- have no containment domes. The only thing standing between the SRS reactors and the outside world are filters -- essentially activated-charcoal filters -- whose operation would fail in the event of a fire, releasing radionuclides to the atmosphere. So fragile is this protection scheme that DOE's restart straegy for the K Reactor at SRS has not only called for improved fire detection and prevention measures, but also for removal of wooden scaffolding and other combustibles from the reactor area prior to restart.

Mr. Stello has a long and well-established track record which runs completely counter to the mission of DOE today, which is to raise the importance of safety measures in the weapons complex to a stature at least as important as production quotas. A public official is someone whom the public trusts to investigate concerns -- and, if necessary, to take appropriate action. Mr. Stello has not demonstrated any concern for public trust, or public welfare in any form. The right-hand man for Secretary Watkins must be concerned with management restructuring, environmental preservation, reduction of risks, health of plant workers, contingency planning for emergencies, and the handling and disposal of radioactive waste which is overflowing sites across the country. Mr. Stello has displayed a disregard not just for one, nor even for several, but for every single one of these issues. He is perhaps the single least qualified candidate for the task at hand.

Lest the Armed Services Committee be concerned about any controversy which may arise as a result of the rejection of Stello's nomination, SANE/FREEZE would like to point out how much controversy will arise should Victor Stello's approval lead to further decline -- or worse, catastrophic disaster -- in the nuclear weapons program.

We believe that the evidence is compelling. A bull in the nation's nuclear china shop should be avoided at all costs. SANE/FREEZE: Campaign for Global Security calls for rejection of the nomination.

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statement prepared with the assistance of the Savannah River Plant Workers Group in Atlanta, Georgia

16 November 1989

Senator Sam Nunn
Chairman
Senate Armed Services Committee
Washington, DC 20510

Dear Mr. Chairman:

I deeply regret being unable to testify before you today concerning the nomination of Victor Stello to be the Assistant Secretary of Energy for Defense Programs (ASDP). I only heard about the possibility of testifying last night. Since I now work in Connecticut, and was locked into a meeting in New York City this morning, it has turned out to be impossible to get to the hearing this afternoon.

I deeply regret this because I want to support the nomination as strongly as I can.

I have known Vic Stello for about 11 years. I first met him when I became an NRC Commissioner in 1978. I worked closely with Vic for the 5 years I was a Commissioner, particularly during the time I was Chairman. I have kept in contact with him since then on an infrequent basis until quite recently, when he has become involved in DOE defense programs.

First impressions of Vic often are not positive. He is a forceful individual, who can be seen as narrow-minded and insensitive. He is both in some ways. He is narrow-minded in his total commitment to safety and he can be insensitive to the egos of those with whom he disagrees. I am not excusing his behavior, only explaining what I came to know.

Amidst the turmoil immediately following the first hours of TMI, Vic was the one person in the NRC and amongst its many advisors who was consistently correct in what was happening -- and this was not based on access to more information, only on a far better understanding of reactor systems. Over the years I was at the NRC, I came to realize that Vic had the most comprehensive knowledge of reactors, and what is necessary for their safe operation, than anyone at the agency, or anyone I met outside the agency.

As you may know, for the past year and a half, I have chaired an advisory committee for the Secretary of Energy. This committee, composed primarily of experts in reactor safety, and from outside the Department, has looked at such operations as Savannah River, the Hanford Purex plant, WIPP, and Rocky Flats. We have just returned from visiting Pantex. Our reports have tended to be quite critical, because as we compare the standards of the commercial nuclear industry to the DOE practices, we have found the latter seriously deficient.

When I heard that Vic Stello had been nominated as ASDP, I was delighted. At last, I thought, the defense programs would get exactly the type of person needed:

-- technically extremely knowledgeable;

-- uncompromising on safety;

-- very demanding of personnel in that only competence and hard work are acceptable;

-- unwilling to allow bureaucracy or lethargy to block his attack on problems.

I do not know whether Vic can solve the defense programs problems. I am absolutely convinced that without the characteristics which Vic possesses to a higher degree than anyone else I know, it is extremely unlikely that the defense problems will be solved.

I find truly incredible any suggestion that Vic allows anything to interfere with safety. I can only conclude that anyone making such suggestions cannot really understand reactors and current operating practices. I had disagreements with Vic in the NRC -- usually these were over style of approach to problems. I suppose I could be accused of arguing that process had to be followed. Vic's concern -- always -- was to get the safety issues handled as soon as possible. I cannot stress this point enough. Vic Stello is single-minded in pushing for safety.

If the DOE problems were mild, then other characteristics might be important for the ASDP. Given the magnitude of the problems, you, Watkins, we all, need Vic.

Finally, let me remark on what appears to me to be a potential tragedy: an inability to recognize dedicated public service.

I spent most of my professional life in the federal service: 11 years in the United States Air Force, 6 years in the Department of Defense, 1 year in the White House, 1 year in the Energy Department, 5 years in the Nuclear Regulatory Commission, and 1 year in the Government Accounting Office. I have also dealt with many congressional staff people who have been on the Hill for long periods. What characterizes the professional in the agencies and on the Hill is a sense of dedication for the public good. Working in the federal service as a career employee is very satisfying -- if you take satisfaction from accomplishing something for the public welfare, take enjoyment from being a servant of the people in our democratic system.

People like Vic Stello are really the heart of our federal system. They do not make a lot of money. They do not have second homes, a new car every few years, and extensive new wardrobes for their spouses. They do not take European or Caribbean vacations, and when their children go off to college, the already tight budget gets tighter. I know because I lived that life, which Vic is living. The rewards are solely from knowing that you are doing a hard job, doing it well, and that the job is important to be done well, important to society. The intangible benefits keep people like Vic in the government. We all are much better off because people like Vic stay in federal service.

But justice should then allow them to progress to positions which they deserve and can accomplish. I believe Secretary Watkins could get no person better than Vic Stello for ASDP even if Congress were to authorize any pay level for the position.

The defense facilities are in bad shape, particularly in attitudes and practices. Vic will not tolerate those. I urge you to vote for his confirmation.

Sincerely,

John F. Ahearne

STATEMENT OF
WILLIAM S. LEE
CHAIRMAN & PRESIDENT
DUKE POWER COMPANY
CHARLOTTE, NORTH CAROLINA

SUPPORTING NOMINATION OF VICTOR STELLO, JR.
FOR ASSISTANT SECRETARY FOR DEFENSE PROGRAMS
U.S. DEPARTMENT OF ENERGY

I am a professional engineer with successful experience in leading the design, construction, start-up, operation and maintenance of nuclear power plants including staffing and training. I am also generally familiar with the challenges at Savannah River, Rocky Flats, and Hanford, having visited each of these facilities several times in a professional capacity to review programs. This recitation of my background is to illustrate my general familiarity with the requirements of the position of Assistant Secretary for Defense Programs.

In the early 1970's, I began interacting with Mr. Stello. His was the role of regulator, mine the role of applicant/licensee. I found Mr. Stello to be thoroughly professional in all respects.

When the Three Mile Island accident occurred, I was called by the owning utility to take charge of reactor cool-down and all site activities on that utility's behalf. As deputy to Mr. Denton, Mr. Stello was there in operational charge of on-site activities of the Nuclear Regulatory Commission. I interfaced with Mr. Stello day and night, including times of urgency and high stress.

Since TMI, I have observed Mr. Stello's operational direction of the Nuclear Regulatory Commission. It needed his brand of leadership which brought organizational focus, emphasis on training, effective management systems, and visionary planning to that agency. And externally, he demanded performance of licensees without compromise. At times I disagreed with his decisions, but he was willing to forthrightly and professionally explain why. Never did I experience nor hear from others in my industry that Mr. Stello was in any way cozy with a licensee. To the contrary, knowing him, if anyone tried to engage in unprofessional conduct it would be at that person's jeopardy as I am sure Mr. Stello would have no part of it.

Mr. Stello is tough yet fair, thorough yet decisive, with impeccable integrity and the type of positive leader that our nation needs in its nuclear defense program. In my view, that job and Mr. Stello will be an excellent match.

Mr. Stello's reputation among nuclear professionals in and out of government is superb. Many of them, like I, feel that he has been falsely maligned. It would be a severe blow to all nuclear professionals serving our nation to have this committed expert denied this appointment.

In the national interest, I respectfully urge the Committee to recommend Mr. Stello's confirmation to the Senate.

Senator **Bingaman**. I am very pleased to welcome all the witnesses to the committee today, and we would ask the witnesses to please summarize their statements, if they could, and do so in 5 to 10 minutes each. Then we will have questions to pursue with them.

We are glad to hear from you today. Thank you for coming. Mr. Pollard, please proceed.

STATEMENT OF ROBERT POLLARD, UNION OF CONCERNED SCIENTISTS

Mr. **Pollard**. Thank you, Mr. Chairman. We appreciate the opportunity to address the issue of whether Victor Stello, Jr. should be confirmed as the next Assistant Secretary for Defense Programs at the Department of Energy. As we indicated in our July 24, 1989, letter to the Committee on Armed Services, the Union of Concerned Scientists believes that Mr. Stello should not be confirmed.

I am currently a nuclear safety engineer on the staff of the Union of Conerned Scientists. I would like to briefly summarize my background and qualifications for you. I began my career in the nuclear power field in 1959 when I enlisted in the U.S. Navy and was accepted into Admiral Rickover's nuclear power program. I served for 6 years, including time as an instructor training reactor operators, and later I was the senior reactor operator in charge of the reactor control division on a nuclear submarine.

Following my honorable discharge I attended Syracuse University and received a Bachelor of Science degree in electrical engineering.

In July 1969 I began my career with the Atomic Energy Commission and stayed as the name was changed to the Nuclear Regulatory Commission until 1976.

After joining the Atomic Energy Commission (AEC), I studied advanced electrical and nuclear engineering at the Graduate School of the University of New Mexico and subsequently became a reactor engineer on the AEC staff responsible for reviewing the designs of plants applying for licenses to make sure they met the safety regulations.

Later when the Nuclear Regulatory Commission was created, I was promoted to the position of licensing project manager and then was in charge of supervising the safety reviews of several plants applying for licenses.

I have been with the Union of Concerned Scientists, as I said, since February 1976 when I left the NRC because of my conclusion that that agency does not have public safety as its first priority. That conclusion was based in part on day-to-day observations of Mr. Stello's attitude and conduct. However, I am not here as an individual. I am here representing the Union of Concerned Scientists, and it is the public record of Mr. Stello's conduct at the NRC which is the basis for our opposition to this nomination.

It is a rare occasion, indeed, when the public record of a nominee's past conduct discloses characteristics antithetical to virtually every attribute that would be desirable in the position to be filled. I think there are at least three major areas that the Senate should examine in detail, and I will discuss each briefly in turn.

First, does Mr. Stello have a high level of expertise in the technologies employed in the Department of Energy weapons production facilities that he would be responsible for managing? If not, has he demonstrated a willingness and disposition to listen to and act on recommendations from the technical experts under his supervision?

As you know, Mr. Stello's responsibilities at the NRC and the AEC before that have involved primarily light water reactors. He has little, if any, recent academic training and certainly no professional work experience related to the technologies employed at the weapons production complex.

Mr. Stello's lack of technical qualifications would not necessarily disqualify him if his past conduct demonstrated a willingness and disposition to listen to and act on recommendations from his technical staff. Unfortunately, Mr. Stello frequently acted to reject or subvert safety recommendations. It is his conduct at the NRC rather than his lack of technical expertise that argues most strongly for the Senate to vote against his confirmation.

Second, what does Mr. Stello's past conduct say about his suitability for promotion to be the Assistant Secretary for Defense Programs?

We have already heard yesterday several of the congressional investigations that have gone on in both the House and the Senate. I would like to touch briefly on just one and then another one in more detail.

First, he has been investigated for his role in attempting to conceal the falsification of leak testing which took place for months prior to the March 1979 accident at the Three Mile Island nuclear plant. This falsification of the leak tests which were required by the NRC in the plant's operating license contributed to the severity of the accident. Perhaps later I could touch back again on some of Mr. Stello's testimony as to whether or not he had a direct role in the attempt to conceal the falsification of leak rate because I do not think his testimony yesterday was an accurate summary of the record.

One example I do want to focus on is Mr. Stello's role in the matter of subverting the NRC's regulations for fire protection in nuclear plants. This has already been investigated by the House subcommittee, and it issued its report entitled, "NRC Coziness With Industry."

The provision of adequate fire protection in nuclear plants is one of the most important aspects of assuring protection of the health and safety of the public, and that is a matter on which I agree with Mr. Stello's testimony yesterday. It has the potential even in the absence of other failures to expose the public to lethal quantities of radioactive materials.

More than 5 years after the Brown's Ferry fire which was nearly disastrous, the NRC adopted new fire protection requirements. The industry tried to weaken them but failed in the rulemaking process. They then went to court to try to overturn the rules, and again they lost. As a last resort they turned to Mr. Stello, who essentially instructed an NRC attorney to write an interpretation of the fire requirements that would satisfy the utilities but would weaken the protection for the public.

If there is any doubt whether fire protection in nuclear plants is adequate, Mr. Stello himself provided the answers in a report to the commissioners on April 30, 1986. Mr. Stello recognized that the existing requirements could not be met at nuclear plants, did not know whether the operators would have enough time to react to a fire, and that the agency was granting exemptions even though they did not have the technical data that supported either accepting or rejecting an exemption to the fire requirements.

There are several reasons why I consider Mr. Stello's actions on fire protection to be in and of themselves a sufficient basis to disqualify him from further government service. After a nearly disastrous fire in a nuclear power plant, years of technical discussions, taxpayer-funded experiments and tests, a lengthy public rulemaking proceeding and then a lawsuit, Mr. Stello intervened, held a secret meeting with the industry he had responsibility for regulating, ignored the advice of his own fire protection engineers and inspectors, and then invented a process which avoided any opportunity for the public and the agency's own experts to thwart his efforts to give the industry what it wanted at the expense of public safety. If these actions do not violate any criminal statutes, they certainly violate the code of ethics for government service.

Finally, Mr. Stello's role or what his nomination means if he is confirmed to the thousands of people who work in the Federal Government. I think if the Senate confirms Mr. Stello you will send a message to the employees of the NRC and the DOE that Mr. Stello's conduct is not only acceptable but exemplary, to be emulated by anyone within the NRC and the DOE who wants a promotion. In my view that would be a tragic mistake, and that is a message you had better not send.

We recognize the committee's reluctance to vote against any nomination because the President deserves substantial deference in choosing people to fill high level positions in his administration. However, in this case we believe that President Bush did not personally become involved in the search and selection of the individual to fill this position. Frankly, we think it more likely that President Bush has received some very bad advice in nominating Mr. Stello.

As I said earlier, it is a rare occasion indeed when the public record of a nominee's past conduct discloses characteristics antithetical to virtually every attribute that would be desirable in the position to be filled.

I also agree with Mr. Stello on another point. It is the people in charge of and carrying out the program, whether it is commercial nuclear power or weapons production complexes, that are the most important aspect of a successful role in carrying out those programs. It is precisely because the people are the most important factor that we are urging the Senate to vote no on Mr. Stello's confirmation.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Pollard follows:]

Testimony of

Robert D. Pollard
Nuclear Safety Engineer
Union of Concerned Scientists

On the Nomination of Victor Stello, Jr. to be
DOE Assistant Secretary for Defense Programs

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to address the issue of whether Victor Stello, Jr. should be confirmed as the next Assistant Secretary for Defense Programs at the Department of Energy. As indicated in our July 24, 1989 letter to the Committee on Armed Services, the Union of Concerned Scientists believes that Mr. Stello should not be confirmed.

I am a nuclear safety engineer with the Union of Concerned Scientists, a nonprofit organization supported by contributions from citizens nationwide. UCS conducts independent research, public advocacy, and public education activities on issues of nuclear arms control, nuclear power safety, and national energy policy. UCS has been an advocate for enhanced safety at nuclear plants and has participated in Nuclear Regulatory Commission proceedings for almost 20 years.

I began my career in the nuclear power field in 1959 when I enlisted in the U.S. Navy and was accepted into Admiral Rickover's naval nuclear power program. After completing the Navy's electronics technician, nuclear power, and submarine schools, I served as an instructor at a submarine reactor training facility and later was the senior reactor operator in charge of the reactor control division aboard a nuclear-powered submarine.

After my honorable discharge in 1965, I attended Syracuse University and graduated with a Bachelor of Science degree, magna cum laude, in electrical engineering.

In July 1969, I was hired by the Atomic Energy Commission (AEC) and continued as a technical expert with the AEC and its successor, the Nuclear Regulatory Commission (NRC), until February 1976. After joining the AEC, I studied advanced electrical and nuclear engineering at the University of New Mexico in Albuquerque and subsequently advanced to the position of reactor engineer with responsibility for reviewing nuclear plant designs for conformance with safety regulations. At about the time the NRC was created, I was promoted to the position of licensing project manager and was in charge of supervising the safety review of several nuclear plant license applications.

I have been with UCS since February 1976 when I resigned my position as a project manager with the Nuclear Regulatory Commission after having been employed there for over six years. I resigned because of my conclusion that the NRC does not have public safety as its first priority. That conclusion was based, in part, on day-to-day observation of Mr. Stello's attitude and conduct.

However, it is the public record of Mr. Stello's conduct as a high level official at the NRC which is the basis for UCS's opposition to this nomination. It is a rare occasion indeed when the public record of a nominee's past conduct discloses characteristics antithetical to virtually every attribute that would be desirable in the position to be filled.

The Assistant Secretary for Defense Programs is one of the most important and sensitive sub-cabinet nominations submitted to the U.S. Senate for confirmation, both because of DOE's vital national security mission and the enormous safety, environmental, and health problems plaguing the nuclear weapons production complex.

The current conditions at the nation's nuclear weapons production facilities, many of which are aging and contaminating the air, water and soil of nearby communities, are evidence of the failures of past assistant secretaries. But these conditions are also evidence that the nation has not been able to rely on supervision by the Secretary of Energy or oversight by the Congress to ensure that the weapons facilities are operated safely. The nation needs an Assistant Secretary for Defense Programs who has the technical expertise and the commitment, integrity, and leadership skills necessary to ensure that, in the future, nuclear safety takes precedence over production at DOE's nuclear weapons plants.

Thus, in deciding whether to vote for or against Mr. Stello's confirmation, there are at least three principal areas that the Senate should examine in detail. I will discuss each in turn.

TECHNICAL EXPERTISE

First, does Mr. Stello have a high level of expertise in the technologies employed at the DOE weapons production facilities that he would be responsible for managing? If not, has he demonstrated a willingness and disposition to listen to and act on recommendations from the technical experts under his supervision?

Mr. Stello has held positions in the AEC and NRC for the last two decades in which his responsibilities involved, primarily, light water reactors used for the commercial generation of electricity. He has little, if any, recent academic training and certainly no professional work experience directly applicable to the wide range of technologies and processes used in the DOE weapons production facilities.

In particular, the area of materials handling and control is outside the scope of Mr. Stello's training and experience. The DOE weapons facilities have experienced severe problems in the handling, processing, transporting, and accounting of solid, liquid and gaseous materials, many of which are toxic, pyrophoric or corrosive. Mr. Stello is also unfamiliar with the unique materials handling problems posed by plutonium, and the constant danger of its theft or diversion, because these problems are, fortunately, not present in the fuel cycle of the U.S. commercial reactors.

Mr. Stello's lack of technical qualifications for this assistant secretary position would not necessarily disqualify him if his past conduct demonstrated a willingness and disposition to listen to and act on recommendations from his technical staff regarding safety issues. Unfortunately, Mr. Stello has frequently acted to reject or subvert safety recommendations--even when the recommendations were made by those with greater technical expertise in the subject area than he. It is his conduct at the NRC, rather than his lack of technical expertise, that argues most strongly for the Senate to vote against his confirmation.

CONDUCT AT THE NRC

Second, what does Mr. Stello's past conduct say about his suitability for promotion to Assistant Secretary for Defense Programs? Does his record at the NRC demonstrate that he has consistently given higher priority to safety factors at nuclear facilities--or to the power generation record? Has he demonstrated the integrity and leadership skills needed to earn the cooperation and respect of his employees and the state officials and members of the public who have concerns about the safety of nuclear facilities?

Neither this committee nor the full Senate needs to rely on the testimony presented today to judge whether Mr. Stello should be confirmed. Mr. Stello's actions as a high level NRC official provide overwhelming evidence that Mr. Stello is not fit to be the NRC's Executive Director for Operations, much less DOE's Assistant Secretary for Defense Programs.

The evidence against Mr. Stello comes from his own actions and not, as Deputy Energy Secretary Henson Moore would have it, "as basically coming from people who are anti-nuclear power." Mr. Stello has been investigated and criticized by the Senate Committee on Governmental Affairs, the House Committee on Energy and Commerce, the House Interior Subcommittee on Oversight and Investigations, and the Department of Justice. Among the subjects of these investigations was Mr. Stello's role in the following:

o Attempting to conceal the falsification of leak testing which took place for months prior to the March 1979 accident at the Three Mile Island nuclear plant. The falsification of the leak tests, which were required by the NRC in the plant's operating license, contributed to the severity of the TMI accident. Moreover, if this falsification had not taken place, the reactor would not have been operating at the time of the accident.

o Advising a TVA official not to provide a definitive answer to the NRC's questions as to whether there had been a total breakdown in the quality of construction under way at the Watts Bar nuclear plant. There is ample evidence that there was a total breakdown in quality control. For example, TVA has since identified some 26,000 items associated with the design, construction, operations, maintenance, and inspection of the plant which must be re-examined, and which may necessitate additional work and expense, before the plant can operate.

o Setting up a secret "slush fund" account to pay an informant several thousand dollars for, according to Mr. Stello, information about alleged safety hazards at the Nine Mile Point nuclear plant. Independent investigations of this affair by committees of both the House and Senate have concluded that Mr. Stello's actions appear to be more a personal vendetta against an NRC investigator than part of any safety investigation.

The House Interior Subcommittee on General Oversight and Investigations, its staff and its chairman, Rep. Peter Kostmayer, deserve praise for the obviously thorough and time-consuming effort expended in investigating this matter. The record developed by that investigation should be considered by this committee in its deliberations on Mr. Stello's nomination. The Senate Committee on Governmental Affairs, chaired by Senator John Glenn who is also a member of this committee, conducted a similar investigation and the record it compiled should likewise be considered.

o Subverting the NRC's regulations for fire protection in nuclear power plants. Mr. Stello's role in this matter has been documented by the House Interior Subcommittee on General Oversight and Investigations on pages 13 to 18 of its December 1987 investigative report, "NRC Coziness With Industry." I will discuss this example of Mr. Stello's conduct in more detail. It illustrates the extent to which Mr. Stello has ignored both the requirements of law and his responsibilities to protect public safety in a zealous pursuit of benefits for the industry he was charged with regulating.

The provision of adequate fire protection in nuclear power plants is one of the most important factors needed to assure protection of the health and safety of the public. A fire has the potential to render a wide variety of vital safety systems inoperable, making it impossible to cool the reactor. Thus, without adequate fire protection, a fire could, even in the absence of any other equipment failures, result in a reactor meltdown and expose the public to lethal quantities of radioactive materials.

A nearly disastrous fire at the Browns Ferry nuclear plant in 1975 was started by a workman looking for air leaks with a lighted candle. The fire which ensued destroyed hundreds of cables in both sets of redundant reactor cooling systems. It was a matter of luck that the plant staff succeeded in using a system never intended or designed to be used for cooling the reactor to avert a catastrophe.

More than five years after the Browns Ferry fire, the NRC adopted new fire protection requirements. During the NRC's rulemaking proceeding, in which UCS participated, the nuclear industry had tried to weaken the requirements, but failed, on the technical merits, to convince the NRC to adopt the industry's view. Then a number of nuclear utilities filed a lawsuit seeking to overturn the new regulations, but the court upheld the NRC regulations and the industry again lost. As a last resort, they turned to Mr. Stello and he essentially instructed an NRC attorney to write an "interpretation" of the fire protection requirements that would satisfy the utilities, but weaken protection for the public.

The fire protection rules had been developed in a public rulemaking process, as required by law, but Mr. Stello's meeting with the industry he was supposed to be regulating was closed to the public. Even the NRC's own fire protection engineers were excluded. These engineers later filed a "differing professional opinion," an act which takes no small amount of courage in the climate at the NRC. The NRC's fire protection engineers and inspectors explained why the "interpretation" of the regulations made it impossible for them to do their job of assuring that there is adequate protection against fires in nuclear power plants, but even this did not deter Mr. Stello.

If there is any doubt whether fire protection in nuclear plants is adequate, Mr. Stello himself has provided the answer. An excerpt from a report which Mr. Stello sent to the NRC Commissioners on April 30, 1986, a year after he had issued his "interpretation" that weaken the rules, is attached. Mr. Stello noted, among other things, that the NRC's fire protection requirements "cannot be met in many control rooms," that it is not known "whether in the event of a credible control room fire the operator will have time enough and the physical ability to transfer control of the reactor to the alternative or dedicated shutdown panel," and that exemptions to the fire protection regulations are being granted to utilities even though "the [NRC] staff often lacks specific technical data that supports either accepting or rejecting a licensee request for exemption."

Secretary Watkins asserted, in a June 27, 1989 press conference, that Mr. Stello has a "wealth of experience from the regulatory side, notably in assuring that nuclear safety takes precedence over production." If that were indeed true, then Mr. Stello would have taken action to assure that the inadequacies in fire protection, as well as the other safety deficiencies discussed in his report, were corrected before plant operation was permitted. However, UCS has determined, through correspondence with the chairmen of NRC's licensing board and appeals board panels, that Mr. Stello did not ensure that his findings were given to the parties in NRC licensing hearings, much less acted upon by the agency.

There are several reasons why I consider Mr. Stello's actions on the fire protection regulations to be, in and of themselves, a sufficient basis to disqualify him from further government employment.

First of all, this subject is within my area of technical expertise as evidenced by the fact that I was the NRC's representative on an industry committee responsible for developing design standards in the area of fire protection. Furthermore, after joining UCS, I initiated the legal process that resulted in the NRC's fire protection rulemaking proceeding.

A principal basis for UCS taking action was that the results of NRC-sponsored fire tests had demonstrated that the industry's fire protection standards, which NRC had adopted over my objections, were not sufficient to assure adequate fire protection. The test results were provided to me anonymously, apparently by a former NRC colleague who believed that I was in a better position to force the NRC to adopt adequate fire protection regulations than the agency's own staff.

Then Mr. Stello intervened. After a nearly disastrous fire in a nuclear power plant, years of technical discussions, taxpayer funded experiments and tests, a lengthy public rulemaking proceeding, and a lawsuit, Mr. Stello held a secret meeting with the industry he has responsibility for regulating. He ignored the technical advice of fire protection engineers and inspectors under his supervision. He invented a process--preparing an "interpretation" of a legal regulation adopted by the NRC commissioners--which avoided any opportunity for the public or the agency's own experts to thwart his efforts to give the industry what it wanted at the expense of public safety.

If such actions do not violate any criminal statutes, they are at least in violation of the NRC regulation, 10 CFR 0.735-3(a)(3), which requires that NRC "employees shall be guided in all their activities by the Code of Ethics for Government Service." The

Code of Ethics states, in part, that "Any person in Government service should uphold the Constitution, laws, and legal Regulations of the United States and never be a party to their evasion."

As the above examples illustrate--and they are only a few of the many examples that could be cited--Mr. Stello has consistently demonstrated, throughout his career at NRC, that protecting the health and safety of the public is not his first priority. In fact, UCS is aware of no instance in which Mr. Stello took prompt, effective action to correct known safety problems or to investigate potential safety problems if doing so would have delayed operation or interfered with continued operation of a nuclear power plant. Instances where he may claim otherwise will undoubtedly be found, upon further independent inquiry, to have been forced upon him by a nuclear plant accident, legal action, or widespread public awareness of a safety hazard.

STELLO AS A ROLE MODEL

Third, does the Senate wish to convey, by its action on this nomination, a message to the thousands of federal employees at the NRC and DOE that Mr. Stello's attitude and conduct have been not only acceptable, but exemplary, and should be emulated by those seeking promotion to higher office?

I have had the personal experience of observing, over a period of many years, how Mr. Stello conducts himself. As a technical expert on the staff of the AEC and NRC, I observed his treatment of employees under his supervision and was the target of his anger when I refused to change my technical evaluations of safety issues within my responsibilities. Subsequently, as UCS's nuclear safety engineer, I have participated in NRC rulemakings, including development of the fire protection regulations discussed above, and adjudicatory licensing hearings, including the Three Mile Island restart proceeding. I have seen no characteristics displayed by Mr. Stello which I would seek to copy or recommend to others.

Mr. Stello has been interested in solving safety problems only as long as it would not (1) substantially increase financial costs, or (2) delay the operation of a plant. NRC staff members who raised safety questions or pointed out violations of safety requirements were almost certain to be the target of Mr. Stello's ire. Mr. Stello seldom questioned his staff about the validity of a safety evaluation that approved a design, but routinely challenged the same technical experts when they concluded that the safety requirements were not being met.

Confirmation of Mr. Stello would convey a strong message to the thousands of employees at NRC and DOE that Mr. Stello has set the standard of conduct desired by the U.S. Senate and the President of the United States. Those employees would in effect be told that, to advance their careers, safety should take a back seat to production quotas. That is a message better not sent.

ARGUMENTS FAVORING CONFIRMATION

In closing, I wish to address the arguments that have come to UCS's attention in favor of Mr. Stello's confirmation.

Perhaps the most frequently cited argument is that Secretary Watkins has been unsuccessful in finding someone more qualified to accept the nomination to be Assistant Secretary for Defense Programs. It is beyond belief that in the entire technical community of the U.S. there is no one more suitable for this position than Mr. Stello. The Senate should reject Mr. Stello and force the administration to persist in the search for a qualified candidate--someone with the skill and temperament to assure that safety takes precedence over production at the nuclear weapons plants.

There is also the view that Mr. Stello has done nothing illegal in his career at the NRC. While that is hardly an endorsement of Mr. Stello, it would be more accurate to say that, so far, Mr. Stello has not been indicted or convicted of a crime. Rep. John Dingell recommended, in an August 3, 1989, letter to the members of the Committee on Armed Services, that you obtain a memorandum from the Department of Justice's Criminal Division that describes the difficulties in prosecuting Mr. Stello following a grand jury inquiry into his conduct. We urge you to follow Rep. Dingell's recommendation.

We recognize the committee's reluctance to vote against any nomination because the President deserves substantial deference in choosing people to fill high-level positions in his administration. However, in this case, we believe that President Bush did not personally become involved in the search and selection of the individual to fill this position. Frankly, we think it more likely that President Bush has received some very bad advice in nominating Mr. Stello. As I said earlier, it is a rare occasion indeed when the public record of a nominee's past conduct discloses characteristics antithetical to virtually every attribute that would be desirable in the position to be filled.

We urge the Senate to vote "no" on Mr. Stello's nomination.

Thank you again, Mr. Chairman and members of the Committee, for your invitation to testify today and for your patient consideration of the views I presented. I would be pleased to attempt to answer any questions the Committee may have.

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

SECY

APR 30 1986

MEMORANDUM FOR: Samuel J. Chilk
Secretary

FROM: Victor Stello, Jr.
Executive Director for Operations

SUBJECT: REPORT REQUESTED BY COMMISSIONERS ASSELSTINE AND BERNTHAL

In response to your memorandum of November 20, 1985, enclosed is a report as requested by Commissioners Asselstine and Bernthal on research projects which for budgetary reasons were deferred or could not be accomplished. This report also addresses the impact of the deferred and cancelled research projects.

In prioritizing research activities, the staff has attempted to provide for a stable, properly balanced research program focused on supporting regulatory activities to ensure safety at operating facilities. There is clear recognition in this prioritization that industry must assume the burden of funding research where industry is the primary benefactor. I do not anticipate that the deferred or cancelled projects will have an adverse impact on the health and safety of the public. However, the effect of the erosion of research capabilities and the resultant inabilities to provide necessary information to answer safety questions cannot be underestimated for the future.

Victor Stello, Jr.
Executive Director
for Operations

Enclosure:
Impact of Budget Cuts on NRC's
Ability to Assure Safety

cc: Chairman Palladino
Commissioner Roberts
Commissioner Asselstine
Commissioner Bernthal
Commissioner Zech
OGC
OPE

Fire Protection Research
(Reductions of $.3M in FY 1986 and $.7M in FY 1987)

Safety Issues: The requirement of separation of the redundant trains of safe shutdown equipment prescribed by 10CFR50, App. R cannot be met in many control rooms. The rule requires in such cases that an alternative or dedicated shutdown capability be provided. Whether in the event of a credible control room fire the operator will have time enough and the physical ability to transfer control of the reactor to the alternative or dedicated shutdown panel is at issue. There is also the question of how much of the control equipment will survive and whether and when control room operation can be resumed.

PRAs are developing into an important tool for identifying safety-deficient areas of plants and for evaluating the effect of back-fits on the overall safety in terms of core-melt frequencies. Large uncertainties in the risk from fires, because of the sparse data base, have been noted. There is a need for experimental data on the fire fragility of safe shutdown components and for an analytical methodology for estimating the environment to which such components may be subjected in the event of a postulated fire.

Current Treatment by NRC: Implementation of Appendix R requirements provides for exceptions when the licensee can show that the proposed alternative is as effective as a particular provision of the rule. The staff often lacks specific technical data that supports either accepting or rejecting a licensee request for exemption. Staff licensing decisions are then based upon best engineering judgment and knowledge gained from commercial and industrial fire protection experience and practices.

Role of Deferred and Cancelled Research: This research would have provided the staff with test data on credible nuclear plant fire sources (e.g., cable tray formations electrical cabinets, etc.), on potential full-scale fire environments in plants, and on the thresholds of failure of some of the more fragile components. The program would also have provided the staff with an analytical tool (a computer code) for extrapolating to various plant-specific rooms and equipment layouts.

Prospects of Work Being done by Industry: No similar program is being sponsored by the nuclear power industry. As far as we can determine, they see no possible benefit from this type research and will not undertake such work in the future.

Senator **Bingaman**. Thank you very much. Before we go to any questions, let me go ahead and call on Mr. Fersht.

STATEMENT OF ERIC M. FERSHT, DIRECTOR, NUCLEAR CAMPAIGNS, GREENPEACE USA, ACCOMPANIED BY STEPHEN I. SCHWARTZ, LEGISLATIVE COORDINATOR, NUCLEAR CAMPAIGNS, GREENPEACE USA

Mr. **Fersht**. Thank you, Mr. Chairman, for the opportunity to testify today on this critical nomination.

My name is Eric Fersht, and I am the Director of Nuclear Campaigns for Greenpeace. Accompanying me is Stephen Schwartz, legislative coordinator for Greenpeace USA, who is sitting behind me. We testify today on behalf of the 1.7 million members of Greenpeace USA and our companion organization, Greenpeace Action, over 640,000 of whom reside in the 12 States housing Department of Energy nuclear weapons facilities.

I would like to request that my written testimony be submitted for the record along with two additional items. One is a report on Victor Stello entitled, "The Wrong Stuff," a product of several organizations opposing the nomination, and the other is a collection of recent editorials from major national newspapers opposing this nomination.

Given the almost daily crises that rock the Department of Energy, there is clearly no nomination more threatening to the health and safety of the United States citizens and the protection of the environment than that of Victor Stello. Because we see this as such a crucial government post, we have taken the unusual step of opposing a Presidential nominee. This is the first time we have done so in our organization's 18-year history.

There is absolutely no question that the urgent task facing the Department of Energy at its nuclear weapons production facilities demand an individual of exceptional integrity and ability. We feel Victor Stello is not that individual.

Let me state emphatically that our reasons for opposing Victor Stello do not stem from his views or our organizations' opposing views on nuclear power. This debate is not about whether nuclear power is a good or bad idea. It is about Mr. Stello's disturbing record of promoting, and in some cases implementing, the views of the nuclear industry instead of regulating that industry by enforcing the law.

While we have had, and continue to have, serious disagreement with Secretary Watkins on the overall direction of the Department's nuclear weapons production complex, we did not oppose his nomination, and despite our different views on nuclear weapons policy, we view Secretary Watkins as a man with whom we can agree to disagree.

Mr. Stello's nomination is another matter. The true issue before the committee is whether this nominee has the credibility and integrity to restore any semblance of public trust in the Department of Energy.

The shocking revelations of this agency's flagrant disregard for health, safety, and environment at the Department of Energy bomb factories have made it essential that restoring public confidence must be the Secretary's and the President's highest priority. It is therefore incomprehensible why the President would nominate Mr. Stello, whose contentious record with the Nuclear Regulatory Commission was certain to mire this critical appointment in unnecessary controversy.

What is most troubling about Mr. Stello's 23-year record with the Atomic Energy Commission and the Nuclear Regulatory Commission is his consistent habit of siding with the nuclear industry on controversial issues. Taken together, these issues reflect a profound lack of judgment and integrity.

We have enumerated a number of specific instances of Mr. Stello's questionable practices in his professional past in our written testimony.

I would like to respond to a point that the nominee made yesterday. In referring to the Stello-White telephone conversation, an incident also cited in the voluminous Stello fact book, Mr. Stello noted yesterday that an April 26, 1988, General Accounting Office investigation stated, "GAO found insufficient evidence to support the OIA investigator's claim that NRC management interfered with the conduct of the OIA investigation, or that results were correctly reported."

What Mr. Stello neglected to mention was that the report also states, "GAO concluded that OIA's investigation of the alleged improper conversation between Stello and White was not sufficiently thorough. OIA failed to determine what it was investigating. Furthermore, OIA failed to pursue the investigation in a timely and systematic manner," and I quote directly from the report.

Mr. Stello has chosen to characterize the litany of charges against him as the result of doing an unpopular job and the reflection of disagreements between individuals within the NRC. He claims his aggressive management style is one reason why conflicts have arisen, but, Mr. Chairman, several congressional investigations have shown that in case after case he took actions with the effect of promoting industry positions and that he frequently stifled debate within the NRC on critical safety matters.

If this sounds familiar, it should, because it is the story of how the Department of Energy has run its bomb factories for over four decades. Secretary Watkins has pledged repeatedly to reverse practices and turn around his Department, but what will confirmation of Victor Stello say to the public, Department of Energy contractors, and employees about this essential goal?

It is difficult to see how employees and contractors will take the Secretary seriously if he installs the one individual who represents everything that is antithetical to what he says he wants to achieve, and what message will the Senate send to the concerned citizens living around Department of Energy facilities if it confirms Mr. Stello, given Mr. Stello's penchant to put production over safety and health at the Nuclear Regulatory Commission?

It is unconscionable to put him in charge of 17 nuclear weapons facilities that have already cracked at the seams with the same kind of production-first mentality.

This committee has stated its intent, in the wake of the Department of Energy's management meltdown over the past years, to take a more aggressive oversight role on these issues. Mr. Chair-

BEST AVAILABLE COPY

man, it is not too late for the committee to fulfill that intent. We urge you and your colleagues on the committee to send the right message on Mr. Stello to the people of this country. We strongly urge you to reject this nomination.

Thank you.

[The prepared statement of Mr. Fersht and other material referred to follows:]

Statement of

Eric M. Fersht
Director, Nuclear Campaigns
Greenpeace USA

Accompanied by
Stephen I. Schwartz
Legislative Coordinator, Nuclear Campaigns
Greenpeace USA

Thank you Mr. Chairman for the opportunity to testify today before the Committee on this critical nomination. I am Eric Fersht, Director of Nuclear Campaigns for Greenpeace USA. Accompanying me is Stephen Schwartz, Legislative Coordinator for Nuclear Campaigns. We testify today on behalf of the 1.7 million members of Greenpeace USA and our companion organization Greenpeace Action, over 640,000 of whom reside in one of the twelve states housing Department of Energy nuclear weapons facilities.

Given the almost daily crises that rock the Department of Energy, there is clearly no nomination more important to the health and safety of United States citizens and the protection of the environment than that of Victor Stello. This is the first time in the history of the Greenpeace Nuclear Campaign that we have taken the step of opposing a Presidential nominee.

Since mid-July, Greenpeace USA and Greenpeace Action have led a nationwide coalition of over 30 local and national environmental groups in opposition to this nomination. While these organizations maintain differing viewpoints on the present and future course of DOE, they are united in their firm opposition to this nominee.

Let me state from the outset that our reasons for opposing Victor

Stello do not stem from his views on nuclear power. This debate is not about whether nuclear power is a good or bad idea. It is about Mr. Stello's disturbing record of promoting and in some cases implementing the views of the nuclear industry rather than regulating that industry by enforcing the law.

While we had and continue to have serious disagreements with Secretary Watkins on the overall direction of the Department's nuclear weapons production complex, we did not oppose his nomination. The issue today is integrity and credibility. Restoring the public's trust, which was shattered over the course of the past year by shocking revelations of callous disregard for health, safety and the environment at the DOE bomb factories, must be the Secretary's and the President's number one priority. It is therefore incomprehensible why the President would nominate Mr. Stello, whose sorry record with the Nuclear Regulatory Commission was certain to mire this critical appointment in unnecessary controversy.

Yesterday, Secretary Watkins dismissed assertions that White House Chief of Staff John Sununu was responsible for Mr. Stello's selection, stating that he, the Secretary, recommended Mr. Stello to the White House as the only one of five candidates willing and able to assume the position. At a meeting I had on August 25 with Secretary Watkins, Undersecretary Tuck and Chief of Staff Polly Gault I was explicitly told that Mr. Stello had been selected by the White House.

What is most troubling about Mr. Stello's twenty-three year record with the Atomic Energy Commission and the Nuclear Regulatory Commission is his consistent habit of siding with the nuclear industry on controversial issues. Robert Pollard with the Union of Concerned Scientists will address in detail one of these issues. Taken together, these issues reflect a profound lack of understanding of the NRC's mission.

For example, Ben Hayes, Director of NRC's Office of Investigations, testified last month before the House Interior Committee's Investigation and Oversight Subcommittee that Mr. Stello has never been supportive of undertaking investigations of NRC licensees and that Stello has been unwilling to provide the necessary funds to carry out such investigations.

At that same hearing, Maureen Gawler, a former employee with NRC's Office of Inspector and Auditor (OIA) stated that, "Often cases involving grave allegations impacting on health and safety were ignored or closed without any activity."

With regard to the Zimmer plant in Ohio, an account of a May 22, 1981 meeting indicates that after NRC investigators presented Mr. Stello with a detailed description of Zimmer's problems, including unacceptable welds on structural beams, improper installation of electrical cables, a serious lack of documentation for materials, harassment of quality-control inspectors and the improper voiding of hundreds of reports on construction problems, Stello insisted that the problems were only "paper work."

Finally, we find it curious that Mr. Stello has chosen to include in his "Factbook", and to cite as an exonerating document, an April 22, 1988 General Accounting Office (GAO) report. In referring to the 'Stello-White' telephone conversation, Mr. Stello noted yesterday that this investigation states, "GAO found insufficient evidence to support the OIA investigator's claims that NRC management interfered with the conduct of the OIA investigation or that results were incorrectly reported." What Mr. Stello neglected to mention was that the report also states:

> GAO concluded that OIA's investigation of the alleged improper conversation between Stello and White was not sufficiently thorough. OIA failed to determine what it was investigating, e.g., there was inadequate effort devoted to determining the nature of what was said and the impact that the conversation had on the actions of

> either party. Furthermore, OIA failed to pursue the investigation in a timely and systematic manner. The investigation should not have been initiated without a proposed plan of action and specification of the rule, law, or regulation that might have been violated. This was evidenced during GAO's interviews of Ward, Mulley, and Connelly since not one of them could provide a convincing justification for their failure to interview White about the alleged improper investigation.

This is not the first time that OIA has conducted thoroughly unprofessional investigations of wrongdoing by NRC employees. Sharon Connelly, until recently director of OIA, was in 1986 found by Congress, the Department of Justice, and NRC's own General Counsel to have tampered with evidence to obtain a favorable outcome in an Equal Employment Opportunity (EEO) proceeding. As Executive Director for Operations, Victor Stello must answer to this Committee as to why Mrs. Connelly was retained despite the damning evidence against her performance.

Mr. Stello has chosen to characterize the litany of charges against him as the result of doing an unpopular job and a reflection of disagreements between individuals within the NRC. He blames his aggressive management style as one reason why conflicts have arisen.

Mr. Stello should answer to the charges leveled by congressional committee after congressional committee that in case after case he took actions with the effect of promoting industry positions and that he frequently stifled debate within NRC on critical safety matters. For Victor Stello, the NRC is really the NLC -- the Nuclear Licensing Commission -- a body whose purpose is to bring as many reactors into operation as possible at the least cost to the utilities. Anything that impedes that sacrosanct goal -- especially costly safety regulations -- is viewed as counterproductive.

If this sounds familiar, it should, because it's the story of how DOE has run its bomb factories for over four decades. Secretary Watkins has pledged repeatedly to reverse past practices and turn around his Department. But what will confirmation of Victor Stello say to DOE employees and contractors about that essential goal? It is difficult to see how employees and contractors will take the Secretary seriously if he installs the one individual who represents everything that is antithetical to what he wants to achieve. And what message will the Senate send to the concerned citizens living around DOE facilities if it confirms Mr. Stello?

Some have noted that the Secretary's reorganization of his Department will remove decisions on nuclear waste and environmental restoration activities from the portfolio of the Assistant Secretary for Defense Programs. While this is true, the Defense Programs position remains responsible for the day-to-day operations of the 17 primary production facilities. More importantly, the Secretary's reorganization memo of September 28 explicitly states that effective June 1:

> ASDP [Assistant Secretary Defense Programs] assumed full accountability and responsibility for operational programs and activities at Savannah River using the following guidelines...(b) provide appropriate management and internal oversight of Defense Program operations by Department of Energy employees within ASDP to assure that all applicable requirements are met. These functions shall be independent from any conducted by contractors.

Given Mr. Stello's troubled record at the NRC, we have grave reservations about allowing him, or anyone else confirmed to this position, to conduct internal self-assessment of the Department's nuclear weapons production functions. We can find no better evidence of the ongoing conflict of interest with respect to these activities and DOE's responsibility for them.

Mr. Stello stated yesterday that only two of the fourteen areas covered in his "Factbook" pertained directly to him, the Stello-White telephone conversation and the Fortuna investigation. He has sought to dismiss the other allegations as reflecting the actions of the NRC as a whole with no bearing on him personally.

Since 1986, Mr. Stello has been the Executive Director for Operations with the NRC, effectively making him the chief of staff reporting directly to the Commissioners. During questioning, Mr. Stello noted that he is directly responsible for the day-to-day operations of the NRC. If there are problems within the NRC or with its ability to regulate the nuclear industry, surely Mr. Stello must be accountable. He cannot have it both ways.

Finally, I would like to comment on the nature of these hearings. As was evident yesterday, the White House is exerting considerable pressure on the Committee to complete its work and vote on Mr. Stello's nomination before the Thanksgiving recess, just a few working days from now. We are deeply troubled by the Committee's apparent willingness to cave in to the White House's demands. I refer to the fact that the Committee has made no attempt to contact opposition witnesses. Those of us who are here today are here only because we asked to be here. Despite the fact that we provided the Committee with a list of witnesses almost three months ago, we understand that none were contacted or offered the opportunity to testify. That some are here today is evidence of their perseverance and their commitment to airing all sides of this issue.

This is all the more disturbing because this Committee has explicitly stated its intent, in the wake of DOE's management meltdown, to take a more aggressive oversight role on these issues. If this hearing is the best evidence of that new commitment, the U.S. public is being ill-served.

There is absolutely no question that the urgent tasks facing the DOE at its nuclear weapons production facilities demand an individual of exceptional integrity and ability. Victor Stello is not that individual. We urge you to reject this nomination. Thank you.

GREENPEACE

July 7, 1989

The Honorable Sam Nunn
United States Senate
Washington, D.C. 20510-1001

Dear Senator Nunn:

We are writing to express our strong opposition to the nomination of Victor Stello, Jr. to be Assistant Secretary for Defense Programs at the Department of Energy. With the DOE's credibility at an all time low and public apprehension about nuclear weapons production at an all time high, a vote to confirm Victor Stello would send the public as well as DOE contractors the wrong message about DOE's attitudes and priorities regarding the nuclear weapons production complex.

As Secretary Watkins has publicly stated, Victor Stello is a controversial nominee. During his 23 years at the Nuclear Regulatory Commission and its predecessor agencies, Mr. Stello has been embroiled in one scandal after another. More often than not, Mr. Stello has placed the interests of utilities ahead of the public and the environment. A lengthy hearing before the Governmental Affairs Committee on April 9, 1987, explored numerous problems with operations at the NRC and, in particular, Mr. Stello's role in several disturbing incidents.

One of these involved the investigation of the Three Mile Island accident, which Victor Stello supervised as the senior NRC official on site. Following the accident, a TMI employee came forward and told the NRC that crucial reactor test data had been falsified in the six months prior to the accident. NRC officials did not include this information in their initial investigation and did not pass it along to the Justice Department. Only after the employee was scheduled to appear on television -- one year after the accident -- did the NRC in March 1980 report these allegations to the Justice Department. Shortly thereafter, at a meeting with Justice Department prosecutors, Mr. Stello, stated that an investigation at TMI would be bad for the operators morale and, "Nobody is going to tell me how to treat my licensees."

A second and more alarming event occurred in January 1986. In December 1985, NRC learned that the Watts Bar Nuclear Power Plant in Tennessee was not being built in accordance with NRC requirements. On January 3, 1986, the NRC sent a letter to the Tennessee Valley Authority (TVA) requesting TVA's official position on whether the plant was in compliance with the regulations. Shortly after the letter was sent, Mr. Stello telephoned Mr. Steven White, the TVA manager of nuclear power, to discuss the letter and TVA's proposed answer. The conversation took place over a car telephone and in the presence of several other senior NRC officials. A subsequent internal investigation revealed that the thrust of Mr. Stello's remarks were to advise Mr. White not to provide a definitive answer to the question, even though this is precisely what the NRC had demanded.

More recently, last April Mr. Stello admitted to using NRC funds on September 1, 1988 to establish a secret 'consulting' fund which was used to pay off an informant to the NRC. According to Mr. Stello, the informant, Doug Ellison, was paid over $6,000 for critical health and safety information. But Ellison has stated that he only gave incriminating information on Roger Fortuna, deputy director of NRC's own Office of Investigations (OI). Mr. Stello has long had a feud with the Office of Investigations, its chief Ben Hayes, and Fortuna. OI has been more aggressive than Mr. Stello would like in uncovering wrongdoing at utilities. After a meeting with Mr. Hayes on December 5, 1985, Mr. Stello threatened him, stating, "Ben...I'm going to get you...I don't care how long it takes, I'm going to get you."

These and other disturbing revelations cause us concern about the direction DOE is heading. Secretary Watkins recently reiterated his commitment to re-orienting his agency's focus from weapons production to health, safety, and the environment. But the Victor Stello that Secretary Watkins recently described as having "...a wealth of experience from the regulatory side, notably in assuring that nuclear safety takes precedence over production," is not the Victor Stello that we know. The fact is, Victor Stello embodies the very attitudes that have brought DOE where it is today -- to a crashing halt. These are the same attitudes that Secretary Watkins wants so badly to eliminate from his department.

On behalf of our 1.5 million supporters in the United States, over 40,000 of whom reside in Georgia, we strongly urge you to vote against Mr. Stello's confirmation. What DOE and the country most urgently need is someone with both the expertise and the credibility to solve the enormous health, safety, and environmental problems presented by the DOE's nuclear weapons factories.

We would be pleased to brief you and your staff on these issues. Thank you for your attention in this matter.

Sincerely,

Eric M. Fersht

Eric M. Fersht
Director
Nuclear Campaigns

Stephen I. Schwartz

Stephen I. Schwartz
Legislative Coordinator
Nuclear Campaigns

enclosures

July 18, 1989

Dear Senator:

We are writing to express our strong opposition to the nomination of Victor Stello, Jr. to be Assistant Secretary for Defense Programs at the Department of Energy. With the DOE's credibility regarding health and safety at an all time low and public apprehension about nuclear weapons production at an all time high, a vote to confirm Victor Stello would send the public as well as DOE contractors the wrong message about DOE's attitudes and priorities regarding the nuclear weapons production complex.

As Secretary Watkins has publicly stated, Victor Stello is a controversial nominee. During his 23 years at the Nuclear Regulatory Commission and its predecessor agencies, Mr. Stello has been embroiled in one scandal after another. More often than not, Mr. Stello has placed the interests of utilities and the nuclear industry ahead of the public and the environment. A lengthy hearing before the Governmental Affairs Committee on April 9, 1987, explored numerous problems with operations at the NRC and, in particular, Mr. Stello's role in several disturbing incidents:

> One of these involved the investigation of the Three Mile Island accident, which Victor Stello supervised for the NRC. For six months prior to the meltdown, at least one NRC inspector knew that crucial reactor test data was being falsified. Yet, this information was not included in initial NRC reports and was not reported to Justice Department prosecutors for over one year, and then only after a TMI employee gave the facts to '60 Minutes.' Mr. Stello later explained the delay by stating that an investigation at TMI would be bad for the operators morale and adding, "Nobody is going to tell me how to treat my licensees."
>
> A second and more alarming event occurred in January 1986. Mr. Stello telephoned the manager of nuclear power for the Tennessee Valley Authority to discuss a written request by the NRC Commissioners about quality control problems at the Watts Bar reactor. The conversation took place over a car telephone and in the presence of several other senior NRC officials. A subsequent internal investigation revealed that Mr. Stello advised the manager not to provide a definitive answer to the NRC's questions, even though this is precisely what the NRC letter had demanded.
>
> More recently, Mr. Stello admitted using NRC funds to establish an unorthodox slush fund on September 1, 1988, which was used to pay off an informant. Mr. Stello established the fund without providing full details to the NRC's general counsel, even though the general counsel had warned that it "...raises a significant policy question." According to Mr. Stello,

> the informant, Doug Ellison, was paid over $6,000 for critical health and safety information (Ellison also received $2,000 for expenses). But Ellison has stated that he only gave the NRC information on Roger Fortuna, deputy director of NRC's own Office of Investigations (OI). Mr. Stello has long had a feud with OI, which has been more aggressive than he would like in investigating health and safety violations at nuclear utilities. Fortuna was suspended in February following Ellison's allegations, but a special inquiry has since exonerated him. Nevertheless, Fortuna has not been reinstated by the NRC.

These and other disturbing revelations cause us concern about the direction DOE is heading. Secretary Watkins recently reiterated his commitment to re-orienting his agency's focus from weapons production to health, safety, and the environment. But the Victor Stello that Secretary Watkins recently described as having "...a wealth of experience from the regulatory side, notably in assuring that nuclear safety takes precedence over production," is not the Victor Stello that we know. Victor Stello embodies the very attitudes that have brought DOE where it is today -- to a crashing halt. These are the same attitudes that Secretary Watkins wants so badly to eliminate from his department.

We strongly urge you to vote against Mr. Stello's confirmation. What DOE and the country most urgently need is someone with both the expertise and the credibility to solve the enormous health, safety, and environmental problems presented by the DOE's nuclear weapons factories.

Sincerely,

Abalone Alliance (San Francisco, CA)
Alameda County Nuclear Free Zone Coalition (Oakland, CA)
Arms Control Research Center (San Francisco, CA)
Carolina Peace Resource Center (Columbia, SC)
Citizen Alert (Reno, NV)
Citizens for Alternatives to Radioactive Dumping (Albuquerque, NM)
Committee for National Security
Environmental Policy Institute/Friends of the Earth
Hanford Education Action League (Spokane, WA)
Government Accountability Project
Greenpeace, USA
Jesuit Social Ministries, National Office
Natural Resources Defense Council
Nuclear Control Institute
Nuclear Free Berkeley (Berkeley, CA)
Nuclear Free California (Oakland, CA)
Nuclear Information and Resource Service
Oak Ridge Environmental Peace Alliance (Knoxville, TN)
Palouse-Clearwater Hanford Watch (Moscow, ID)
Public Citizen
Radioactive Waste Campaign (New York, NY)
Rural Alliance for Military Accountability (Carson City, NV)
SANE/FREEZE: Campaign for Global Security
Snake River Alliance (Ketchum, ID)
Women's International League for Peace and Freedom
Women Strike for Peace

GREENPEACE

27 October 1989

President George Bush
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. President:

On behalf of the 1.9 million members of GREENPEACE USA (and our companion organization, GREENPEACE ACTION), we are writing to urge you to withdraw the nomination of Victor Stello to be the Assistant Secretary of Energy for Defense Programs.

GREENPEACE USA, GREENPEACE ACTION and 35 national, state, and local organizations are opposing his confirmation by the Senate.

Over the past two years, revelations of mismanagement and criminal negligence in the Department of Energy nuclear weapons production complex have shattered any semblance of public trust in the agency's operations.

It has not helped that this critical position of Assistant Secretary for Defense Programs has not been filled. But there is absolutely no question that the urgent tasks facing the DOE at its nuclear weapons production facilities demand an individual of exceptional integrity and ability. Victor Stello is not that individual.

In the three months since his nomination was sent to the Senate, skepticism has grown over Mr. Stello's credibility and qualifications for such a sensitive role. Two days ago, Secretary of Energy James D. Watkins asked Undersecretary John Tuck to assume on an interim basis the role of Acting Assistant Secretary for Defense Programs pending confirmation of Victor Stello. We hope that this is a sign that you are reconsidering the Stello nomination.

Mr. Stello's professional record at the Nuclear Regulatory Commission (NRC), most recently as Executive Director for Operations, has shown him to be on the wrong side of nearly every safety and environmental issue that has confronted the Commission.

Moreover, Mr. Stello has been involved in a well-documented series of scandals in his years at the NRC. Most recently, in a hearing before the House Interior Committee's Oversight and Investigations Subcommittee, Stello admitted that he purposely delayed investigating serious allegations of drug use at a nuclear power plant in New York for seven months. Stello is an individual who should be summarily dismissed from government service, not given a promotion to a sensitive post.

We are looking to you to reverse the health, safety, and environmental crisis posed by the DOE nuclear weapons complex. We therefore respectfully request that you immediately withdraw Mr. Stello's nomination.

This is a true litmus test for an "environmental President."

Respectfully,

Eric M. Fersht

Eric M. Fersht
Director
Nuclear Campaigns

Stephen I. Schwartz

Stephen I. Schwartz
Legislative Coordinator
Nuclear Campaigns

The Wrong Stuff

An Information Summary on Victor Stello

Assistant Secretary
for Defense Programs - Designate
U.S. Department of Energy

September 1989

Government Accountability Project • Greenpeace USA • Public Citizen
Environmental Policy Institute/Friends of the Earth

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INTRODUCTION

President Bush's choice for Secretary of Energy, Admiral James D. Watkins, has given critics of the nuclear weapons program cause for hope. Recently, Admiral Watkins unveiled a new ten-point initiative that, if implemented, would place environmental and health and safety concerns ahead of production, establish "tiger teams" that would pounce on recalcitrant facilities, and institute a "new culture" within DOE that would seek to fundamentally change the agency's thinking about its mission.

One of his initiatives, however, is sure to taint the Admiral's otherwise refreshing changes - - the proposed appointment of Victor Stello as Assistant Secretary for Defense Programs, described as the "point man" responsible for carrying out the initiatives.

Mr. Stello is well-known to observers of the commercial nuclear program as the lap dog instead of the watchdog for the industry. As Executive Director for Operations for the Nuclear Regulatory Commission (NRC), he has been on the wrong side of nearly every safety issue that has confronted the Commission. Victor Stello's appointment would send the public as well as industry contractors the wrong message about DOE's attitudes and priorities.

As the top bureaucrat at the NRC, Mr. Stello has been embroiled in one scandal after another. For example, Senator John Glenn held a hearing in April 1987 that explored numerous problems with operations at the NRC, and in particular, Mr. Stello's role in several disturbing incidents. More recently, questions remain about Mr. Stello's role in an apparent vendetta by one senior NRC staff director against another high-ranking NRC official, Roger Fortuna. The incident led to two Congressional reports, one by the House and the other by the Senate, critical of Stello's role. In short, Mr. Stello has the wrong stuff for what it takes to get the job done. As Representative John Dingell, Chairman of the House Energy and Commerce Committee stated in a letter to Senator Sam Nunn, Chairman of the Senate Armed Services Committee, the "only benefit of moving Mr. Stello to the Department of Energy is ridding the NRC of Mr. Stello."

This information summary examines some of the more controversial incidents that have led to the call for Mr. Stello's rejection at upcoming Senate confirmation hearings before the Subcommittee on Strategic Forces and Nuclear Deterrence of the Armed Services Committee. Information sources for the report are provided in the endnotes.

If Admiral Watkins expects the public to believe that he is serious about reforming agency mismanagement, he must choose a more credible point man for his initiatives. What DOE and the country most urgently need is someone with both the expertise and the credibility to solve the enormous health, safety, and environmental problems presented by the DOE's nuclear weapons factories. The public should urge Congress to reject Stello's appointment, and Admiral Watkins should choose someone with the right stuff.

This report was prepared as a joint project between staff members of Greenpeace USA, Government Accountability Project, Environmental Policy Institute/Friends of the Earth, and Public Citizen. Special thanks to Tom Kuchenberg, David Culp, Peter Grinspoon and Chris Zimmer for their work.

Tom Carpenter

Tom Carpenter
Government Accountability Project

Stephen I. Schwartz
Greenpeace USA

James Beard
Environmental Policy Institute/
Friends of the Earth

Ken Bossong

Ken Bossong
Public Citizen

Thomas Kuchenberg, Esq.

Executive Summary

This report summarizes some of the more controversial and well-documented incidents at the Nuclear Regulatory Commission involving Victor Stello, Jr. We conclude that based upon the voluminous evidence of Mr. Stello's penchant for placing the interests of the nuclear industry ahead of those of the public, and on his long-standing emphasis on production over health, safety and the environment, the Senate should vote to deny Victor Stello's confirmation to the Department of Energy.

Incidents summarized in the report are as follows:

o Stello's involvement with the Nuclear Pharmacy and Stepan Chemical cases, where as director of the Office of Inspection and Enforcement he compromised investigations of wrongdoing by an NRC licensee by revealing potentially incriminating materials to the targets of the investigation [pp. 2-3].

o Stello's role in the Zimmer (Ohio) nuclear power plant controversy where Stello ignored serious quality control problems, and pressured NRC investigators to stop digging up new problems, all in an effort to open a deeply flawed facility [pp.3-5].

o Stello's pivotal role in helping to water down stringent fire protection regulations for nuclear power plants after receiving personal complaints from utility representatives and over the strenuous objections of NRC's own fire protection engineers [pp. 5].

o Stello's direction of the investigation of the accident at Three Mile Island, which ignored key testimony from a reactor operator that critical safety tests were being falsified (and which subsequently contributed to the severity of the accident), tests which would have forced the reactor to shut down [pp. 6-9].

o Stello's investigation of serious quality assurance problems with reactors at the Tennessee Valley Authority [pp. 9-10].

o Stello's general attitude toward the NRC's investigative process [pp. 10-12].

o Stello's role in the Fortuna affair, a wasteful vindictive, unprofessional investigation of the Deputy Director of Office of Investigations for matters supposedly relating to health and safety concerns but really having more to do with revenge and personal animosity between senior NRC staff, including Stello, and Fortuna [pp. 13-16].

Investigative Groups within the Nuclear Regulatory Commission

This report attempts to employ as much brevity as possible. Therefore, be sure to check the endnotes for more extensive explanations as well as the source of the information. You will find the following acronyms in the body of the report - -

IE - (Occasionally called OIE) - Office of Inspection and Enforcement - Earliest of the investigation groups within NRC, Stello was its director from June 1979 until November 1981.

OIA - Office of Inspector and Auditor - Set up to be the equivalent of the Inspector General of other agencies. Independence of this group was greatly compromised by top NRC officials, including Stello. After creation of the Office of Investigations, OIA limited to investigating allegations concerning NRC employees or contractors.

OI - Office of Investigations - Set up in April 1982, this group was to be responsible for investigating licensee compliance with NRC regulations. Its investigators, notably Roger Fortuna and Ben Hayes, often struggle to maintain the independence of OI.

IG - Inspector General - As a result of continued evidence of improper interference by senior NRC staff in NRC investigative bodies, Congress established an independent IG which began operations in the spring of 1989. As of May 1989, acting IG Martin Malsch headed this office.

Career[1]

STELLO receives a BS and MS degree in mechanical engineering from Bucknell University and completes further graduate work at the Rennselaer Polytechnic Institute. From 1960 to 1966 he works for the Pratt and Whitney Aircraft Company where he analyzes high temperature liquid metal reactors for proposed use in aircraft.

1966 - STELLO joins the regulatory arm of the Atomic Energy Commission, predecessor agency to the Nuclear Regulatory Commission (NRC). From 1966 to 1971 he is a member of the licensing technical staff where he conducts safety reviews of reactor plants. In 1971 he is promoted to branch chief of the boiling water licensing branch "responsible for supervising and coordinating the safety evaluations for reactor plants under review for either construction permits or operating licenses."

1972 - He becomes chief of the Reactor Systems Branch and primarily involved with reactor systems design. In 1973 he became Assistant Director for Reactor Safety. In 1976, after the creation of the NRC, he becomes Director of the Division of Operating Reactors.

6/79 - STELLO is appointed Director of the Office of Inspection and Enforcement. "In that post he was responsible for managing and directing the agency's program that verifies licensee compliance with regulatory requirements and for taking enforcement action determined to be needed on the basis of the office's inspection efforts. Mr. STELLO, with over 20 years experience in various nuclear programs, played a major role as a senior representative at Three Mile Island following the accident in Unit 2."

11/81 - STELLO is appointed Deputy Executive Director for Regional Operations and Generic Requirements. In that post he is responsible for, "...reviewing and recommending to the Executive Director for Operations... requirements which the NRC staff believes should be imposed on one or more classes of power reactor licensees." He is also responsible for the headquarters direction of the NRC's five regional offices located in King of Prussia, Pennsylvania; Atlanta, Georgia; Glen Ellyn, Illinois; Arlington, Texas; and Walnut Creek, California.

1/3/86 - STELLO is appointed Acting Executive Director of the NRC.

4/1/86 - STELLO is named Executive Director for Operations. As such he "is the NRC's chief staff officer and responsible for directing and coordinating the agency's operational and administrative activities and for the development of policy options for Commission consideration."

7/24/89 - STELLO formally nominated for the position of Assistant Secretary for Defense Programs, Department of Energy.

Nuclear Pharmacy [2]

The Nuclear Pharmacy and Stepan Chemical cases are both instances where NRC investigations indicated potential criminal wrongdoing. In both cases, the actions of STELLO's IE compromised these investigations by revealing potentially incriminating materials to the likely targets of the investigation.

1978 - 79 - Nuclear Pharmacy Incorporated (NPI), headquartered in New Mexico, repackaged chemical grade radioactive Xenon-133 labeled "not for human use" and sold it to hospitals for human use. These actions represented a violation of both the NRC regulations and Nuclear Pharmacy's license.

10/79 - NRC refers this matter to the Department of Justice (DOJ) for possible criminal prosecution.

12/79 - James Snieczek, Director of Fuel Facility and Material Safety Inspection Division of IE, and other NRC personnel meet with DOJ officials. They agree to take no action against NPI until DOJ finishes criminal investigation.

1/80 - Despite this, STELLO, Snieczek, and others from the NRC meet with President of NPI and his attorney. STELLO states at the meeting that IE has determined that the transfers of Xenon-133 do not violate any license conditions or NRC regulations. In the course of the discussions, government evidence and theories are disclosed. DOJ states that these disclosures materially impaired their "ability to obtain untailored grand jury testimony or interview statements."[3]

3/80 - A letter from DOJ accuses Snieczek and STELLO of undermining the investigation. The letter also accuses the two of a basic confusion as to who their clients are supposed to be -the licensees or the public.[4]

3/80 - OIA head James Cummings announces agreement with the DOJ position and states that the problem is long-standing in nature, and that cooperation between IE and OIA is non-existent in spite of meetings "with senior IE staff officials."[5]

Stepan Chemical [6]

11/7/80 - NRC receives an anonymous package containing an internal legal memorandum indicating that Stepan Chemical is engaged in a deliberate attempt to deceive the NRC about the existence of a radioactive waste burial site. Stepan, of Maywood, New Jersey, had earlier applied for an NRC license regarding two radioactive waste burial sites. In their application, they did not mention a third, which is located beneath a building in which the secret ingredient for Coca-Cola is supposedly stored.

12/80 - NRC General Counsel forwards the Stepan memorandum to STELLO, then head of IE, raising the question of whether the whole matter should be referred to Department of Justice (DOJ) for criminal action.

12/80 - 6/80 - STELLO's IE investigates and confirms existence of an unauthorized dump. NRC issues a notice of violation to the company and in letter to U.S. Attorney suggests criminal violation.

6/80 - U.S. Attorneys declare that prosecution is doubtful because of actions of IE investigators who informed Stepan's attorneys of existence and contents of the memo.

8/80 - U.S. Attorney declines prosecution and tells head of OIA that it was informed of internal memo only after "NRC personnel had interviewed and debriefed the suspected individuals, thus increasing the likelihood of viable alibi defenses."

8/80 - 9/80 - STELLO defends IE in memos to OIA head Cummings. Cummings responds on 9/15, "I continue to be puzzled that, as the chief enforcement official of NRC, you continue to down-play the possible value of criminal sanctions in affecting overall licensee compliance with NRC regulations."[7]

Cummings never calls for investigation of IE and STELLO's conduct.

Zimmer [8]

1976-1980 - Cincinnati Gas and Electric (CG&E) violates construction and safety standards while constructing the Zimmer nuclear power plant. Some of the violations are fundamental to plant safety and include the use of unqualified welders, thousands of faulty welds, use of materials not of nuclear grade and the subsequent illegal upgrading of these materials on paper, and defective wiring. Quality Assurance inspectors are intimidated and documents are altered to cover up failures and errors.

1976 - CG&E has hired the Henry J. Kaiser Company as main construction contractor. A Kaiser quality assurance inspector goes public with concerns about installation of uninspected components. NRC orders IE to check into the matter. Nothing comes of this inquiry.

1977 -1978 - NRC Region 3 employee, Terry Harpster, arrives at Zimmer in October 1977 and concludes that the plant is out of control. He tries unsuccessfully to resolve these problems with CG&E management. He reports his findings to Region 3 Administrator, James Keppler. Nothing comes of this initiative.

1980 - Thomas Applegate, a private detective working for CG&E at Zimmer, finds evidence of faulty welds and falsified documentation. He reports this to CG&E and is subsequently fired. Applegate then contacted the NRC, which once again orders IE, now headed by STELLO, to investigate. A minor paperwork violation is reported.

1980 - Applegate contacts the Government Accountability Project (GAP). A GAP lawyer interviews Zimmer employees and in December goes to the NRC. Another former Zimmer quality assurance inspector contacts NRC with reports of violations.

12/80 - NRC sends IE back to inspect Zimmer but also sends OIA along to check out current and past IE performance.

3/81 - Region 3 staff are following more than 600 allegations of wrongdoing including serious construction flaws, bad welds, and a bookmaking operation run out of the plant's security office. The staff recommends padlocking the whole operation.

3/81 - Region 3 administrator James Keppler refuses to close plant. Instead meets with the head of the utility.

4/81 - Keppler orders corrective action taken with regard to Quality Assurance program.

4/81 - At Region 3 staff meeting STELLO, head of IE, accuses staff of digging up paperwork problems. States there are no real "hardware" concerns.[9]

4/81 - OIA investigators, David Gamble and John Sinclair, file critical report. They point out that IE investigation (under STELLO's leadership) of earlier complaints involved no interviews, failed to review welding documentation, and failed to look at any welds. Further they find that Harpster had brought these matters to attention of Keppler three years previously. OIA investigators also discover direct involvement of top utility official in violating Quality Assurance.

4/81-8/81 - This report is rewritten at the direction of OIA Director, James Cummings. Its findings and conclusions are softened and the Harpster matter is removed from the document.

7/81 - An internal Kaiser investigation estimates that 80 to 90 percent of structural materials were illegally upgraded on paper.

8/81 - Gamble and Sinclair object to the alteration of their report.

10/81 - OIA Director Cummings, in a memo to NRC Chairman Palladino, describes the earlier IE investigation regarding Zimmer: "Fundamentals basic to all investigations were simply not observed...The investigative file contained no results of interviews at all nor was there any detailed record of copies of documentation reviewed." (emphasis Cummings')[10]

10/81 - Cummings holds incriminating material for "possible criminal action." Investigation never completed.

7/82 - Original, unedited, Gamble and Sinclair OIA report leaked.

1983 - Internal NRC report on the Zimmer investigations blames STELLO for ruling out criminal investigation and for taking an "artificially narrow ... unduly restrictive approach to health and safety."[11]

1/84 - Zimmer's owners announce that the plant is to be scrapped as a nuclear facility and that the $1.6 billion project will be converted to a coal burning unit.[12]

The Fire Rules [13]

1975-1980 - A serious fire at the Brown's Ferry nuclear plant in Alabama in 1975 disables vital safety systems. As a result, the NRC fire regulations designed to guarantee safe shutdown in case of fire. Under these regulations, utilities must develop a fire protection plan that satisfies the NRC.

1982-1985 - Utilities bypass technical experts, telling the Deputy Division Director that if he won't help them change the rule, the will immediately contact STELLO.

In private - the NRC fire protection engineers are excluded - STELLO meets with representatives of the utilities. He instructs a staff attorney to prepare an "interpretation document" satisfactory to the utilities. Under this "interpretation," each utility is allowed to modify and interpret NRC fire protection standards without even consulting with the NRC.

4/84 - Sheldon Trubatch, the NRC attorney who had successfully defended the original fire regulation against the utilities' challenge, states that the STELLO revision is a fundamental change and should be subject to notice and comment. He concludes his memorandum by noting that "to now interpret Appendix R so as to not incorporate a fundamental lesson learned at Brown's Ferry would appear to directly contradict the Commission's intent in promulgating Appendix R."

1985 - The STELLO "interpretation" is issued.

6/87 - Former Commissioner Asselstine states that NRC fire protection people were never allowed to make their case to STELLO.

Three Mile Island

The accident at Three Mile Island (TMI) in March 1979 resulted in a partial meltdown of the Unit 2 reactor. The resulting TMI inquiries are far-reaching and complicated. Some were a direct result of the accident and others arose from the effort of TMI management to restart the undamaged Unit 1 reactor at Three Mile Island. Three items are summarized here. STELLO, as head of IE during much of this period, played a major role in each.

Hartman/Leak Rate Falsification

3/28/79 - Three Mile Island meltdown accident occurs.

5/79 - Harold W. Hartman, Jr., former control room operator at TMI, tells NRC investigators that for months before accident operators, with the knowledge of management, falsified primary cooling system leak rates to keep plant running. The NRC investigators do not investigate further or tell Commissioners.[14]

10/79 - Hartman repeats his allegations to the NRC Special Inquiry Group (Rogovin Commission) which doesn't include them in its report.[15]

3/80 - Hartman tells his story on NY television program.[16]

4/80 - NRC investigators decide Hartman allegations are substantial and refers them to DOJ which begins Grand Jury investigation. STELLO claims that he told Commissioners of earlier IE staff conclusion that allegations were correct. There is no evidence of this and two Commissioners deny ever having heard of the matter.[17]

4/87 - Testifying before the Senate Committee on Governmental Affairs, Julian Greenspun, who was involved in handling the Hartman matter while at DOJ, states that "...certain senior NRC officials continued to insist that the utility's conduct at TMI was acceptable...It is my belief that these officials actively misled and even lied to the Justice Department in the TMI case. Perhaps most revealing, in a meeting with myself and other prosecutors, Mr. STELLO, now Executive Director of the NRC, said that an investigation at TMI would be bad for the operator's morale, and: 'Nobody is going to tell me how to treat my licensees.'"[18]

5/87 - In an interview, Greenspun elaborates on the Hartman affair. (see endnote)[19]

STELLO and the TMI/Babcock and Wilcox Trial [20]

TMI management sued Babcock and Wilcox (B&W), which built the Unit 2 reactor, on the theory that design and construction faults caused the accident. The trial threatened to produce major revelations about B&W's design and TMI management practices.

11/82 - Trial begins.

12/82 - NRC Commissioners ask STELLO to review the record of the lawsuit.

1/83 - Out-of-court settlement ends lawsuit.

3/83 - STELLO report on the trial record concludes that it contains no information that would affect the Commission's decision to allow TMI management to restart and operate the undamaged second reactor.

4/83 - Four of the five NRC Commissioners denounce STELLO report stating that it has few references to actual trial and is basically a rehash of earlier accident reports. The Commission essentially removes the matter from STELLO and gives it to a 25-member panel.

9/83 - Panel/Staff review determines that seven issues of management integrity are raised in the trial record that are relevant to the restart issue. These are then referred to OI.

Three Mile Island - The Early Accident

The utility claimed that it was unaware of serious core damage for some time after the accident. More particularly, that it was unaware of a hydrogen explosion on the early afternoon of the first day of the accident which would have given conclusive proof of core damage and likely prompted an immediate evacuation order from the Pennsylvania government. Two major questions are raised: (1) Did the utility suppress information about the severity of the accident? (2) Did the NRC attempt to cover up the utility's action?

The accident began a little past 4 A.M. on Wednesday, March 28th, 1979. In the following material that day is referred to as the first day of the accident. On Friday, March 30th, the third day, a partial evacuation of the area around TMI was begun.

1/7/81 - Two OIA investigators examine allegations that NRC inspectors on the scene at the damaged Unit 2 control room were told of the hydrogen explosion by utility employees. The NRC inspectors denied any knowledge of the explosion. A third inspector, Karl Plumlee states that he heard his branch chief mention high levels of hydrogen before departing for the accident site and again heard of hydrogen concentrations from an employee of the utility. He states that he passed this information to a fourth member of the NRC team who was relaying information to headquarters. Plumlee states that possible reasons the utility and NRC may have had for keeping details of the accident secret were: (1) the danger of employees leaving the plant, (2) the danger of NRC refusing to enter the area, and (3) the possibility that evacuating citizens would cram the roads and block emergency response efforts.[21]

1/9/81 - Plumlee is summoned to NRC offices in Bethesda, Maryland. During the course of a 224 page deposition Plumlee states that while his statements of 1/7/81 regarding possible reasons for the NRC and utility keeping details of the accident from being widely known are speculation on his part, he "would find it very difficult to believe that Gary Miller and the top supervisors in the Unit 2 control room were not aware that they had some really serious matter with the core by 8 o'clock in the morning. I think that there is no way that anyone who is acquainted with the reactor would have any doubt by 8 o'clock in the morning, if you were in the control room in Unit 2, that the core was severely damaged."[22]

1/12/81 - Charles Gallina, Investigation Specialist with IE, and one of the five members of the first NRC team sent to TMI testifies before STELLO and other top NRC staff. At one point he states:

> *"As a matter of fact...after the fact we went back and, you know, you're interested, you read the chronology of what happened, and what Met[ropolitan] Ed[ison] people were doing on Wednesday. And I remember saying if I had known Wednesday what had happened on Wednesday - I mean the details of radiologically - I probably would have looked upon the entire incident in a totally different light. Where I felt very strongly that an evacuation was a mistake on Friday, if I had known what type of readings they were getting on Wednesday when I got there, I might have even recommended to the region that we consider a precautionary evacuation. But we were kept - radiologically we were kept in the dark as to what was going on in the plant."*[23]

11/84 - A federal grand jury is reported to be investigating possible criminal acts by NRC employees with regard to Zimmer and TMI. The report states that, in the case of TMI, the grand jury was, "focusing on allegations that NRC employees acted improperly in investigating events surrounding the March 28, 1979 accident at Unit 2."

> "An NRC licensing board recently received evidence that NRC employees investigating the accident might have limited the probe improperly and made false statements about whether plant officials withheld information about the nuclear accident's severity."[24]

12/84 - Former NRC investigator David Gamble testifies before an NRC panel that agency's investigation of whether the utility withheld information during the accident was deliberately incomplete and inaccurate, and its conclusion exonerating the company of wrongdoing was not supported by the facts.[25] The scope of Gamble's testimony is restricted by the NRC Office of General Counsel.[26]

4/86 - STELLO named directly by "critics inside the commission" in connection with TMI accident with regard to botching investigation of whether management withheld information on accident's severity and the Hartman matter.[27]

4/87 - Greenspun again criticizes STELLO describing how STELLO refused to follow-up a TMI investigation regarding the Hartman matter. He states that he knows of no other regulatory or investigative agency where senior agency officials have taken as many bizarre and seemingly deliberate actions intended to hamper the investigation and prosecution of individuals and companies in the industry the agency regulates." Placing OI under the direction of the Executive Director for Operations (STELLO) "is no less than putting the fox in the chicken coop."[28]

Tennessee Valley Authority Nuclear Program

7/85 - NRC admits there are safety and quality assurance problems with Tennessee Valley Authority (TVA) nuclear facilities.[29]

8/85 - Congressional investigations of TVA management and NRC Region 2 begin. Former Region administrator named as possible target.[30]

8/85 - TVA closes the last of its 5 licensed-to-operate nuclear plants.[31]

11/85 - 12/85 - Ben Hayes, Director of OI, meets with NRC Chairman Palladino to update him on the progress of the TVA investigations. Hayes tells Palladino that the Commission's handling of the TVA affair is disorganized and recommends that the Commission appoint a senior executive, provided with sufficient authority to take responsibility for the TVA project. Later that day he repeats this advice to Commissioner, subsequently Chairman, Lando Zech.[32]

11/85 - 12/85 - At a later management meeting at NRC Region 1 Office in King of Prussia, Pa., STELLO approaches and, shaking his fist in Hayes' face, states, "'Ben, if what you said comes to pass, I'm going to get you.'" Thinking STELLO is joking, Hayes asks, "What are you doing Vic, threatening me?" STELLO replies, "'I don't care how long it takes, I'm going to get you.'" Hayes believes the threat was "dead serious."[33]

1/3/86 - STELLO named acting Executive Director for Operations.

3/86 - Steven White, head of TVA's nuclear power program, writes a letter to NRC saying there are no problems at one of TVA's plants. He states review of programs by outside experts confirms this. Of nine people named as part of the review group, seven later claim they have never spoken to White.[34]

3/86 - STELLO informs TVA's Steven White how to mitigate an NRC inquiry by not giving a definite response to an NRC demand letter. This is done over the mobile phone in an NRC vehicle. Investigation of the matter was referred to OIA which is subject to STELLO's influence as Executive Director for Operations.[35]

4/1/86 - STELLO named Executive Director for Operations.

3/88 - The NRC's OI spends ten months investigating the possibility that TVA official Steven White falsely reported on the safety of plant systems. It concludes there are grounds for criminal investigation by DOJ. STELLO's deputy then convenes an eight member review group which two weeks later reverses the decision of the investigators. The review group goes to DOJ and informs its criminal division "that top agency officials did not believe the allegations..so they were not worth pursuing."[36]

10/88 - NRC concludes that Steven White repeatedly made false statements to the Commission and that the statements constitute a violation of federal rules. Nonetheless the Commission has decided, "as a matter of prosecutorial discretion," not to pursue action against White.[37]

STELLO and the NRC's Investigative Process

4/86 - Julian Greenspun resigns from DOJ and denounces the NRC handling of investigations stating that, "Watergate hasn't taught these people a thing."[38]

4/86 - Power struggle reported in the NRC over an incident at the Fermi nuclear power plant in Michigan. On July 2, 1985 an operator at the plant improperly removed control rods from the reactor and triggered a premature chain reaction. The utility, Detroit Edison, at first denies that the reactor reached "critical" status. OI investigators find, in a preliminary report, that the utility made "material false statements," but "senior NRC staff members" are delaying the OI probe of incident and resisting attempts to send it to DOJ. OI investigators complain that some NRC staffers are trying to muzzle them. STELLO is leader in attempt to block the case, arguing NRC, not the utility, is primarily at fault for not investigating the accident.[39]

4/86 - Senior staffers try to redefine and narrow "material false witness" statement, which is the standard for determining when a licensee might be prosecuted for lying to the Commission. STELLO, as acting EDO, had proposed these changes. The changes would eliminate information withheld or omitted and apply only to written statements or sworn testimony a person knew was false. Staff and Commissioners are revealed to have assumed the power of reviewing cases OI wants sent to the Justice Department.[40]

4/86 - NRC Commissioner Asselstine says STELLO "is someone who personally has not been a strong supporter of doing criminal investigations, within NRC, or pursuing wrongdoing."[41]

11/86 - The NRC establishes the Investigation Review Board (IRB). Regional Administrators can no longer refer suspected wrongdoing to the OI. In the five months after the IRB is established there are eight referrals for investigation. In a comparable five month period a year earlier, there were 42. STELLO, as Executive Director for Operations, instigates this change. OI head Ben Hayes states, "I agree with Commissioner Asselstine's statement that the IRB appears to be a '...thinly veiled attempt by the EDO (STELLO) to control OI by controlling what referrals are made, and thus what OI investigates.' After Mr. STELLO expressed the view that cases were being referred to OI that should not have been, I wrote the EDO and asked for a list of such cases. Mr. STELLO's response was a memorandum that basically stated that he didn't have the resources to answer that question. I failed to see what the problem was that the staff was attempting to resolve."[42]

12/86 - Inspectors at Comanche Peak, a Texas nuclear plant, charge that they are pressured by NRC officials to change or delete negative findings. The NRC Chairman puts STELLO in charge of any possible action to be taken as a result of the charges.[43]

1/87 - A National Academy of Sciences panel strongly attacks the management of NRC and declares that it is in dire need of reform.[44]

1/87 - 4/87 - Government Accountability Project (GAP) Lawyer Billie Garde investigates allegations concerning safety violations at the South Texas Nuclear Power Plant. Fifty-four corporate and government workers have contacted her with the understanding that their identities and information are to be kept confidential. In January, the utility responsible for the plant, Houston Lighting & Power, and the NRC learn that GAP has this information. In March the utility demands same. GAP offers to place the allegations before, and set up interviews with, a special task force of "trustworthy investigators." STELLO rejects the offer and threatens to subpoena all records, including names of parties making the allegations.[45]

4/87 - George Mulley, Assistant Director for Investigations at OIA, describes an investigation he was assigned to make at the Comanche Peak nuclear station. During the course of this investigation he determined that:

(1) NRC Region 4 managers tried to limit violations discovered by their own inspectors at the plant;

(2) The Quality Assurance program of the plant could not be relied on as evidence of safe construction:

(3) An inspector was harassed and intimidated in an attempt to get him to change his inspection findings.

During the course of the investigation he was under constant pressure from STELLO to complete the report. Mulley's supervisor, Director of OIA Sharon Connelly, has the report rewritten by a group of OIA auditors. STELLO then has the report distributed throughout the agency, exposing those who had given testimony to retaliation.[46]

4/87 - NRC Commissioners lift requirements that investigation be reviewed by the Commission before referral to DOJ."[47]

4/87 - Witnesses at congressional hearing attack OIA for failing to investigate STELLO. Congressman Markey accuses STELLO of coaching owners of Seabrook on how to get a license.[48]

5/87 - On the 20th, Billie Garde receives a subpoena, signed by STELLO, commanding her "to appear...for the purposes of testifying before NRC personnel concerning allegations of current and/or former employees of the South Texas project...and any other allegations which you have received...and to provide any records or other documents in your possession or under your custody or control concerning such allegations." GAP prepares a Motion to Quash the subpoena and submits it to the Commissioners. [49]

7/87 - The Commissioners deny the GAP Motion to Quash without oral argument.[50]

8/87 - The Department of Justice sues Garde and GAP demanding the names of NRC and corporate clients, those who had supplied information on the South Texas Project.[51]

10/87 - The U.S. District Court for the District of Columbia rules in favor of GAP stating that the government (NRC)..."has not satisfied this Court that it has explored alternatives to the use of compulsory process to obtain the information sought. This conclusion is reinforced by the broad sweep of the subpoena...The NRC cannot cast with such a wide net when constitutional freedoms are at stake..."[52]

12/87 - Congressional report issued by the House Committee on Interior and Insular Affairs, Subcommittee on General Oversight and Investigations, criticizes NRC and STELLO for maintaining too close a relationship with the nuclear industry.[53]

1/88 - Greenspun again attacks NRC's handling of investigations. STELLO had stated in April 1987 that diverting NRC manpower into investigation and cooperation with DOJ reduces resources available for carrying out its mission to protect health and safety.[54]

3/88 - Sources inside NRC state that a new tactic has been used to torpedo investigations since STELLO became EDO in 1986. Investigations are reviewed by special committees which veto the conclusions of the investigators. Greenspun again attacks STELLO's handling of one of the TMI investigations, this time saying that STELLO deliberately mishandled the investigation. STELLO denies being soft on investigations.[55]

The Fortuna Investigation

8/88 - Disenchanted whistle-blower Douglas Ellison approaches OIA head Sharon Connelly and asks for $5,000 for information in his possession, part of which relates to alleged wrongdoing by OI inspector Roger Fortuna. Ellison claims this wrongdoing is revealed in conversations with Fortuna that Ellison has taped. Fortuna has earlier testified against Connelly in an NRC employment discrimination suit that led to critical comments on her actions from DOJ and calls for her ouster from a number of Congressmen. Connelly checks out the possibility of establishing an "informant slush fund" for the purpose of obtaining Ellison's information. [56]

8/88 - NRC General Counsel William Parler in a memo to Connelly states, "'I am not aware of any budget justification data in our existing authority which would authorize the establishment of such a fund." Stating that he agrees with its conclusions, Parler refers Connelly to an earlier memorandum on the subject which states, "a determination that such expenditures are authorized would not be on sound legal ground...we are unable to conclude that such expenditures would be authorized.'" Parler also states that if an informant had information essential to an investigation related to health and safety, Connelly should contact the Office of General Counsel. Parler later discusses the matter at a meeting with STELLO and Connelly and is informed there could be safety issues involved.[57] Parler reminds STELLO and Connelly of the NRC's subpoena powers and asks why they couldn't be used. Connelly states that there is a fear that the information would be destroyed. Ellison has made no threat to destroy his information and, in fact, has been threatening to "go public to the press."[58]

9/88 - In spite of Parler's opinion, Connelly goes to STELLO who approves the fund.[59]

9/88 - STELLO receives disbursements of cash from the NRC in $1,000 and $2,000 increments. In one document acknowledging the cash disbursement, STELLO states, "'I have obligated and approved for payment the amount of $8,122.58 for the necessary expenses of the U.S. Nuclear Regulatory Commission in carrying out the purposes of the Energy Reorganization Act as amended, and Atomic Energy Act, as amended.'"[60]

Fall 88 - Connelly lists three objectives for the investigation in her personal notebook. Two relate to safety matters but at the top of the list, circled, she writes, "Dispose of RF [Roger Fortuna]". In another entry, apparently written in the Fall she writes "30 days - notice of an adverse action, next step - get manage to direct him to come - at a certain time then proposed adverse action...'"[61]

9/88 - Ellison is brought to Washington and put up in a hotel in a Virginia suburb. The STELLO/Connelly contract pays him $40 an hour and subsistence pay of about $150 per day. He receives $6,491 for a few pages discussing his tapes. Connelly and STELLO apparently use a consultant contract rather than an informant contract to obtain authorization for making payments to Ellison, possibly to avoid the appearance of an informant payment.[62] The money is distributed, in cash, by STELLO's assistant, James Blaha.[63]

9/88 - Connelly sends her information to the Department of Justice which declines to prosecute Fortuna stating that he had not committed a criminal offense and that his actions, "appeared to be very proper and well within his rights." Connelly nonetheless continues the investigation.[64]

11/88 - On November 4th, OIA investigators Herr and Resner interview Fortuna. When Fortuna specifically asks whether he is the target of their investigation, they deny it. This is in direct violation of a policy earlier set by Connelly stating that those who are targets of OIA investigations would be informed of the fact.[65]

12/88 - Connelly recommends Resner for a $3,500 cash award which he receives 3/89 "in recognition of special achievement which resulted in a significant contribution to the work of the Commission."[66]

Winter 88-89 - Ben Hayes, Director of OI would normally handle any adverse personnel action against his deputy, Fortuna. He is kept out of the matter and Hayes' superior, after a meeting with STELLO, takes control of the case. Fortuna is suspended after refusing to answer questions before Connelly and proceedings to fire him begin. He agrees to an interview with Judge Alan Rosenthal who replaces Connelly on the case.[67]

2/89 - Senator John Glenn writes Chairman Zech informing him of his intentions to review allegations concerning OIA investigations of OI. He wishes to review documents and interview witnesses.[68]

2/89 - Former STELLO assistant James Blaha and another NRC employee destroy documents related to the Ellison consultant contract.[69]

3/89 - Connelly asks to be reassigned from her position as Director of OIA to another NRC post. She transfers to a newly-created position within the Office of the Comptroller.[70]

4/89 - STELLO admits having established the secret fund on September 1, 1988 using $10,000 in NRC money. STELLO claims that the money was used to pay an informant for important health and safety information. Ellison, however, says the only information he gave NRC investigators concerned Roger Fortuna, deputy Director of OI.[71]

5/89 - Administrative Law Judge Alan Rosenthal issues a preliminary report indicating that he has found no evidence of dereliction of duty or misconduct on Fortuna's part.[72]

5/89 - The staff of the House Committee on Energy and Commerce, Subcommittee on Energy and Power concludes that a review of documents in the Fortuna matter "provides evidence of a wasteful investigation with revenge the primary motive."[73]

5/89 - Philip Sharp, Chairman of the House Subcommittee on Energy and Power, sends a letter to the Comptroller General of the General Accounting Office stating that in the course of the committee investigation "questionable activities" have been uncovered. He poses 10 questions to the GAO most of which center around the legality of the STELLO payments to Ellison.[74]

5/89 - Sharp sends a letter to Lando Zech, Chairman of the NRC, urging Fortuna's reinstatement, "because it appears that his whole removal may have been caused primarily by Ms. Connelly's motives to destroy the Office of Investigations."[75]

8/89 - Maureen Gawler, former OIA investigator, tells the Senate Committee on Governmental Affairs that OIA investigations of OI supervisors or employees were "'(1) arbitrarily opened; (2) pursued with tremendous personal vengeance; and (3) very seldom had a basis in law or fact.'" NRC General Counsel William Parler informs the Committee that a combination of Connelly and STELLO investigating a senior OI investigator, such as Fortuna, was the "'worst possible combination'" and represented a "'low common denominator of common sense and judgement." He characterizes the investigation as "'vindictive.'"[76]

8/89 - The Senate Committee on Governmental Affairs concludes that the Fortuna investigation:

> *"(1) was pursued in a questionable manner; (2) created the appearance that the investigation was motivated as much by reasons of personal and professional animosity between NRC personnel as it was by the legitimate needs of the NRC; (3) was conducted in a manner which was unfair to the NRC employee (Fortuna) who became the 'target' or 'subject' of the inquiry; (4) violated inspector general principles by involving NRC management to an inappropriate degree in the conduct of the investigation; and, (5) represented a waste of government funds. In sum we found very little reason for the course of conduct of this investigation."*[77]

The Committee report noted that STELLO had persisted in a course of conduct that, once again, compromised the investigative process:

> *"It is a general principle of the inspector general community that management should not be involved in determining how and when to proceed with particular investigations.*
>
> *"In 1987 the Committee found such management interference and involvement in several OIA investigations...the case study concerning the involvement of Victor STELLO, Jr. with respect to OIA's Comanche Peak investigation...and the case study concerning the involvement of Victor STELLO, Jr. with respect to OI and*

OIA investigations regarding TVA...

"In this case the Committee finds that NRC management again became (deeply) involved in the conduct of the investigation. From the inception of the Ellison investigation, the Director of OIA involved the NRC's Executive Director for Operations (EDO), Victor STELLO, Jr., in all facets of the investigation. STELLO was the official who provided the 'safety' rationale in order to escape the General Counsel's directive that the NRC staff did not have the authority to pay informants for internal investigations of alleged employee misconduct, if there was no public health or safety significance. We believe that allegations that Ellison provided concerning new safety related concerns was so limited that the case could equally be made that this safety rationale merely provided a convenient cover to do something that the NRC General Counsel had otherwise indicated could not be done - putting someone on the payroll to provide information pertaining to an internal affairs investigation.

"The General Counsel of the NRC gave written guidance indicating that as a general matter, the NRC had no authority to pay for evidence of informants, although he indicated the NRC could conceivably pay to obtain information necessary to carry out the NRC's safety mission. At the time this written opinion was given, the General Counsel was not told about Ellison's potential credibility problems; nor was he told that OIA already had previewed the information and had already focused on Fortuna's activities, which were not safety issues. The NRC's General Counsel indicated that had he been told either of these facts, he would have actively opposed the NRC's putting Ellison on the consultant payroll. Subsequently, STELLO remained involved in the investigation on a day-to-day basis. He assigned his assistant, James Blaha to participate in the investigation on a day-to-day basis, including during the two week period when Ellison was secreted in a Virginia hotel room at government expense. Blaha paid Ellison (in cash) and had other duties."[78]

- end -

ENDNOTES

1. United States Nuclear Regulatory Commission, Office of Governmental and Public Affairs, "Victor Stello," undated.

2. U.S. House Committee on Interior and Insular Affairs, Subcommittee on Oversight and Investigations, Briefing Memorandum from staff to members, "Subcommittee Hearing on June 20, 1983: Nuclear Regulatory Commission Investigative Practices," June 17, 1983, pp 19-22.

3. Ibid, page 20, quoting letter of 3/7/80 from Lawrence Lippe, Chief, General Litigation and Legal Advice Section, Criminal Division, Department of Justice to William Dircks, Acting Executive Director for Operations:

> *"During the meeting, the NRC officials disclosed Government theories and evidence. These disclosures have the potential of materially impairing our ability to obtain untailored grand jury testimony or interview statements."*

4. Lawrence Lippe, Chief, General Litigation and Legal Advice Section, Criminal Division, Department of Justice, to James H. Snieczek, Director Fuel Facility and Material Safety Inspection Division, Office of Inspection and Enforcement, Nuclear Regulatory Commission, Washington, D.C., March 7, 1980.

Portions of the letter:

> *"As you are aware we were surprised to learn that you, Mr. Stello and others held a meeting with Mr. Sanchez, the President of NPI and his attorney Tom Vakerics at the NRC on January 21, 1980. And, as an understatement, we were extremely disturbed to be advised by Mr. Vakerics' law partner that Mr. Stello had indicated at this meeting that the Office of Inspection and Enforcement had determined that the bulk transfers of Xenon 133 by NPI to its customers did not violate any license conditions or NRC regulations, and further that OIE decided to drop Count 2..*
>
> *"Moreover, a suggestion by a public agency that a licensee can avoid his license requirements and those of his transferee merely by looking at his transferee's license, and then deal in black market radioactive materials at his pleasure, is hardly in the public interest, generously speaking...*
>
> *"Moreover, gratuitous vacillations of positions, gratuitous and apologetic concessions and admissions, and gratuitous disclosures of evidence and theories prior to the completion of an investigation, could deservedly or undeservedly suggest a basic confusion as to who the respective clients are. The clients, of course, are the public--the millions of persons who cannot afford to retain lawyers and law firms to represent them before the NRC and who have no other persons to protect their interests. Furthermore, if any benefits of doubt are to be made, they should be made on the side of public safety and the NRC would certainly owe no premature and gratuitous apology, concession or admission to anyone for doing so."*

5. Oversight and Investigations Briefing Memorandum (Note 2), p. 21

6. Ibid., pp. 22-25.

7. Ibid., p. 24, quoting Memorandum of 9/15/81 from James Cummings, Director, Office of Inspector and Auditor (NRC) to Victor Stello, Director, Office of Inspection and Enforcement, (NRC).

8. Dale Keiger, "Born to Lose: The Truth about Zimmer," Cincinnati, September, 1983, pp. 83-93.

9. Ibid., p. 91.

10. Ibid., p. 89.

11. Washington Post, "NRC Officials Avoid Pursuit of Wrongdoing, Critics Say," April 8, 1986, p. A6.

12. Knight-Ridder, (Washington Post), "Grand Jury Here investigates NRC Employees at 2 Plants," November 18, 1984.

13 House Committee on Interior and Insular Affairs, Subcommittee on General Oversight and Investigations, NRC Coziness With Industry, 100th Cong., 1st sess., December 1987, pp. 13-18.

14. Three Mile Island Alert, Inc., "TMI Restart Chronology," Harrisburg, Pennsylvania, 1985, p. 1.

15. Ibid.

16. Ibid., p. 2.

17. Ibid., p.2.

18. Prepared Testimony of Julian Greenspun before the Senate Committee on Governmental Affairs, April 9, 1987, p.5. (Underlined emphasis Greenspun's, capitalized emphasis supplied.)

19. Corporate Crime Reporter, "Interview with Julian Greenspun, Former Deputy Chief of Litigation, Criminal Division, Department of Justice," May 11, 1987, pp. 5-10. On page 6 Greenspun stated:

> *"Six months before the accident, the NRC inspector discovered the fact that leak rate tests were being manipulated at TMI on a routine inspection and wrote up an inspection report in which he reported all kinds of minutiae, but didn't mention a thing about manipulated leak rates, the most serious of all violations...*
>
> *"...Then when the accident occurred, the NRC sent a team of investigators up to Three Mile Island. The company's technical people had discovered that there were leak rate violations. Other investigators interviewed this fellow, Harold Hartman. Hartman was a control room operator who had first hand knowledge of what was going on there. He then told the NRC that the company was falsifying leak rate tests and the problem was getting worse and worse closer to the accident. The operators were having a terrible time keeping the leak rate under control, which meant there was a terrible problem with the system and that they were manipulating the tests by adding water and so forth and they were told not to follow up on it. The investigative report that the NRC staff wrote, called NUREG-0600, talked about leak rates, but attributed the leak rate violations to 'inadvertent errors,' almost like it was an act of God, when actually the company knew about it all along and was covering it up, and that is what they pleaded guilty to eventually - when the NRC and the utility couldn't cover up for them anymore. And they did cover up for them in the administrative hearings.*
>
> *"Anyway after the first investigations shortly after the accident, another investigative team came in. Another NRC inspector-type was to follow up on this leak rate allegation and the Hartman allegation. He did and thought it was quite serious and should have been put in the follow up report. He was given some cock and bull excuse as to why it couldn't go in.*

> *"A year later, what finally flushed this out into the open, was when Harold Hartman, the control room operator, went on a television show. The reporters began asking questions of the NRC. With that the NRC sent a team of people up there. Now the NRC is pursuing it vigorously. The NRC team that went up in March or April of 1980 confirmed the fact that leak rates were being manipulated and tests were falsified for a period of six months. Records were missing which in itself was a violation of NRC regulations. And yet that confirmation was misrepresented to the Department of Justice. Now we start getting involved because it is on television. So we learned about it. And it was downplayed to us by certain NRC personnel. We are told that it is basically of no consequence and there are certain questions whether there were any violations, when the (NRC) knew that the contrary was the case. They also assigned a person to be an NRC expert to assist the Department of Justice in its grand jury investigation. This was the very person that headed the first investigative team that told the NRC investigators not to follow up on the Hartman interview.*
>
> *"It is my belief that these people actively misled and even lied to the Justice Department in the TMI case. Perhaps most revealing, in a meeting with myself and other prosecutors, Mr. Victor Stello, now Executive Director of the NRC, said that an investigation at TMI would be bad for the operators morale, and, 'Nobody is going to tell me how to treat my licensees.'"*

20. TMIA, "TMI Restart Chronology" (Note 14), pp. 4-5.

21. Roger Fortuna and David Gamble, Office of Inspector and Auditor, U.S. Nuclear Regulatory Commission, "IE Inspectors' Alleged Failure to Report Information RE March 28, 1979 Hydrogen Explosion at TMI-2," January 7, 1981, pp. 24-27.

22. U.S. Nuclear Regulatory Commission, "Deposition of Karl Earl Plumlee," January 9, 1981, p. 142.

23. U.S. Nuclear Regulatory Commission, "Deposition of Charles Gallina, In the Matter of: Three Mile Island Nuclear Power Plant, Unit 2," Monday, January 12, 1981, p. 21.

Earlier Gallina had testified about his understanding of the damage at TMI:

> *"As soon as we arrived at the site we knew they had core damage. Our perception of that damage dealt primarily with a higher amount of failed fuel, if you will, rather than physical damage to the core. It wasn't until the afternoon of the 29th when I was informed of the dose measurements on the primary coolant sample that I realized we had significant core damage...*
> *There was information known to our investigation team that was not known to us on the initial day of the incident. Had we known it, it would have brought this condition to light a bit sooner...Our investigators found out in the Hot Machine Shop dose rates had gone up to 850R per hour. I think that was the number I was told recently. That, in itself, would have indicated that we had severe core damage... Met-Ed employees stated that early in the incident they had detected these levels..."*

- Deposition of Charles Gallina, President's Commission on the Accident at Three Mile Island, August 2, 1979, pp. 31-34).

24. Knight-Ridder (Washington Post), "Grand Jury Here Investigates NRC Employees at 2 Plants," November 18, 1984.

25. TMIA, "Restart Chronology" (Note 14), p. 12.

26. Letter from Lynne Bernabei, Attorney for Three Mile Island Alert, (under letterhead of Government Accountability Project), to Sharon Connelly, Director, Office of Inspector and Auditor, U.S. Nuclear Regulatory Commission, December 10, 1984.

Portions of the letter:

> *"On December 3, 1984, the General Counsel issued a legal opinion, severely restricting the areas in which Mr. Gamble would be permitted to testify. Mr. Plaine stated that Mr. Gamble would only be permitted to discuss facts that were known to him while he was an NRC employee and opinions which he held while an NRC employee. He further stated that Mr. Gamble would not be permitted to offer any expert opinions other than to the extent that he testified from personal knowledge as to occurrences which are relevant to the issues in the proceeding. Finally, Mr. Plaine informed Mr. Gamble that his testimony would be further limited by Executive Order 11222 and implementing regulation 10 CFR 0.735-41, which provide that no employee shall use information gained as a government employee which has not been made available to the general public to further a private interest unless prior written authorization to use such information has been obtained from the Executive Director for Operations. Mr. Plaine interpreted this to prohibit Mr. Gamble from testifying as to information which had not been made publicly available except if the Licensing Board were to order Mr. Gamble to disclose such information." (page 4)*
>
> *"At several points during cross-examination of Mr. Gamble on December 6, he refused to answer because of his fear that adverse actions would be taken against him if he testified beyond the bounds outlined by OGC. (page 5)*
>
> *"On December 7, 1984, again Mr. Gamble declined to answer several questions because of these same fears... (page 5)*
>
> *"Mr. Gamble stated at the end of his testimony on December 7 that he wished the record to reflect that he had attempted to comply in good faith with OGC's restrictions and asked the Licensing Board to ratify that he appropriately censored his testimony... (page 5)*
>
> *"Mr. Gamble's concluding remarks reveal that his apprehension about OGC's restrictions pervaded his entire testimony." (page 6)*

27. Washington Post, "NRC Officials Avoid Pursuit of Wrongdoing, Critics Say," April 8, 1986, pp. A1&A6.

28. Greenspun Testimony, (Note 18), pp. 8-9.

29. UPI, (Washington Post), "NRC Staff Concerned about TVA Weaknesses," July 4, 1985.

30. Washington Post, "NRC, 3 House Panels Probing Agency Office," August 8, 1985.

31. UPI (Washington Post), "TVA Closes Remaining Atom Plant," August 4, 1985, p. A4.

32. Prepared Testimony of Ben B. Hayes, Director, Office of Investigations, United States Nuclear Regulatory Commission before Senate Committee on Governmental Affairs, April 9, 1987, p. 8.

33. Ibid.

34. New York Times, "False Reports Laid to TVA," October 23, 1988.

35. Hayes Testimony, (Note 33), pp. 5-7.

On Page 6, Hayes testifies - -

> *"...the NRC sent a January 3, 1986, letter to TVA asking TVA's official position as to whether Watts Bar was in compliance with Appendix B, and allowed TVA 7 days to respond in writing. The*

NRC letter was very important. If TVA were to have indicated that the plant was not in compliance with Appendix B, then the NRC staff might have issued an immediate stop work order to halt construction. It was also noteworthy that Watts Bar was very close to licensing; in fact they were anticipating licensing as early as April, 1986.

"I was informed by Harold Denton, Director, Office of Nuclear Reactor Regulation, that Mr. Stello had initiated a telephone call in his presence while the two of them and other NRC staff were returning from a meeting at the Commission offices on H Street in Washington, D.C.. Mr. Denton related that the telephone call was to Mr. Steven White, the TVA Manager of Nuclear Power, and that the conversation dealt with TVA's proposed response to the NRC's January 3 letter. Mr. Denton was very uncomfortable with that because of his view that White should respond without any advice from the commission..."

36. New York Times, "Nuclear Agency Assailed by Staff," March 6, 1988.

37. New York Times, "False Reports Laid to T.V.A.," October 23, 1988.

38. Washington Post, "NRC Officials Avoid Pursuit of Wrongdoing, Critics Say," April 8, 1986, pp. A1&A6.

39. Ibid.

40. Ibid.

41. Ibid.

42. Hayes Testimony (emphasis supplied), (Note 33), pp. 8-9.

43. AP (Washington Post), "Nuclear Plant Inspectors Charge NRC Harassment," December 12, 1986.

44. AP (Washington Post), "Experts Call for Reform at the NRC," January 8, 1987.

45. Government Accountability Project, "Summary Re: U.S. subpoena of GAP files and clients' identities related to the South Texas Nuclear Project, undated, (from context apparently prepared in August or September 1987), pp. 1 & 2.

46. Statement of George A. Mulley, Jr. before the Senate Committee on Governmental Affairs, April 9, 1987.

47. AP (Washington Post), "NRC Chief Vows Independence," April 21, 1987.

48. Ibid.

49. GAP, Summary, p. 2.

50. Ibid.

51. Ibid.

52. U.S. v Garde, 673 F. Supp 604 (D.D.C. 1987).

53. "NRC Coziness With Industry," (Note 13), December, 1987.

As part of its findings, the subcommittee's investigative report states:

(4) Those at the highest levels of the NRC staff, including the Executive Director for operations (STELLO), interfered with and undermined an investigation of licensee wrongdoing performed by NRC's Office of Investigations. The actions of the staff made it difficult, if not impossible, for the NRC to take civil or criminal enforcement action against a utility which had violated the Atomic Energy Act and NRC's regulations by knowingly making false statements to the NRC. The importance of a lack of credibility on the part of nuclear utilities cannot be overstated. The NRC relies on the representations of the utilities in performing its routine regulatory functions. Moreover, the NRC has failed to properly support the Office of Investigations so that it can carry out meaningful and truly independent investigations. Instead, the NRC has taken affirmative steps to limit the effectiveness of its investigators.

54. New York Times, "Nuclear Agency Said to Lag in Seeking out Crime," January 31, 1988.

55. Jack Anderson and Dale Van Atta, (Washington Post), "NRC: Policeman or Chum?" March 27, 1988.

56. U.S. House Committee on Energy and Commerce, Subcommittee on Energy and Power, Staff Memorandum to Chairman Philip R. Sharp, "Re: The Fortuna Case," p. 6.

57. Ibid, pp. 6&7.

58. Senate Committee on Governmental Affairs, Serious Problems Continue in the Nuclear Regulatory Commission's Internal Investigations, 101st Cong., 1st sess., August 1989, p. 10.

59. Sharp Memo, p. 7.

60. Ibid.

61. Ibid, p. 2.

62. Ibid.

63. Ibid, p. 28.

64. Ibid, p. 3.

65. Senate Committee on Governmental Affairs, Serious Problems..., p. 25.

66. Ibid, p. 27.

67. Sharp Memo, (Note 62), pp. 8-9.

68. Senate Committee on Governmental Affairs, Serious Problems..., p. 27.

69. Ibid.

70. Senate Committee on Governmental Affairs, Serious Problems . . .", p. 28.

71. Inside NRC, April 24, 1989, p.1.

72. Sharp Memo, (note 62), p. 2.

73. Ibid, p. 1.

74. Letter, U.S. House Committee on Energy and Commerce, Subcommittee on Energy and Power, Philip R. Sharp, Chairman, to Charles A. Bowsher, Comptroller General, United States General Accounting Office, May 23, 1989.

75. Letter, U.S. House Committee on Energy and Commerce, Subcommittee on Energy and Power, Philip R. Sharp, Chairman, to Lando Zech, Chairman, U.S. Nuclear Regulatory Commission, May 23, 1989.

76. Senate Committee on Governmental Affairs, Serious Problems..., p. 18.

77. Ibid, p. 1.

78. Ibid, pp. 31-32. (Underlined emphasis Committee's, capitalized emphasis supplied).

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Editorials

Energy chief isn't pleased

The people running the U.S. Department of Energy don't understand the nuclear-bomb production business, their information can't be trusted and some are incapable of managing a nuclear plant safely.

None of that is news here, where citizens and public officials have been trying to straighten out the DOE's foulups at the Hanford Nuclear Reservation for 40 years. But these disparaging conclusions are noteworthy because they come not from anti-nuclear malcontents, but from the boss-man himself, new Secretary of Energy James D. Watkins.

Watkins was not happy with what he found at DOE. He said bluntly, "The chickens have finally come home to roost and years of inattention to changing standards and demands regarding the environment, safety and health are vividly exposed. . . ."

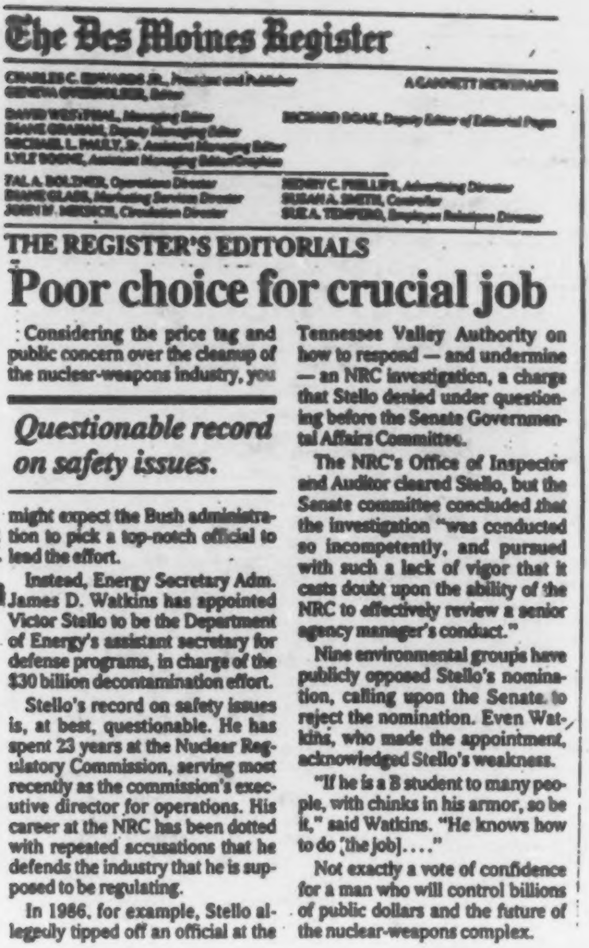
Among results of that neglect are aging, unsafe, plants incapable of meeting defense needs; no acceptable place to put dangerous nuclear waste; a need to spend billions of dollars to clean up nuclear wastes at Hanford and elsewhere, and significant damage undoubtedly done to the natural environment and probably done to human health.

Watkins promises to set things right by giving environmental and safety concerns priority over weapons production; welcoming outside oversight of plants and DOE actions; sharing worker-health data with researchers; watching plant managers closely; seeking more outside advice, and consulting more with states.

The only jarring note here is that Watkins has chosen Victor Stello Jr. to supervise the troubled bomb-production plants.

Stello had his own problems in his former job as executive director for operations at the Nuclear Regulatory Commission. The NRC has been criticized for coddling the civilian nuclear industry. And members of Congress, along with environmentalists, have accused Stello of siding with the industry in disputes over NRC rules and of hobbling his own people when they attempted to investigate violations.

Watkins sounds properly irate over the Energy Department's dismal record and sincere in his efforts to put things right. However, given DOE's past performance and the Stello appointment, prudence dictates that residents of nuclear-impacted states hold their applause until they see more of the Watkins show.



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THE REGISTER'S EDITORIALS

Poor choice for crucial job

Questionable record on safety issues.

Considering the price tag and public concern over the cleanup of the nuclear-weapons industry, you might expect the Bush administration to pick a top-notch official to lead the effort.

Instead, Energy Secretary Adm. James D. Watkins has appointed Victor Stello to be the Department of Energy's assistant secretary for defense programs, in charge of the $30 billion decontamination effort.

Stello's record on safety issues is, at best, questionable. He has spent 23 years at the Nuclear Regulatory Commission, serving most recently as the commission's executive director for operations. His career at the NRC has been dotted with repeated accusations that he defends the industry that he is supposed to be regulating.

In 1986, for example, Stello allegedly tipped off an official at the Tennessee Valley Authority on how to respond — and undermine — an NRC investigation, a charge that Stello denied under questioning before the Senate Governmental Affairs Committee.

The NRC's Office of Inspector and Auditor cleared Stello, but the Senate committee concluded that the investigation "was conducted so incompetently, and pursued with such a lack of vigor that it casts doubt upon the ability of the NRC to effectively review a senior agency manager's conduct."

Nine environmental groups have publicly opposed Stello's nomination, calling upon the Senate to reject the nomination. Even Watkins, who made the appointment, acknowledged Stello's weakness.

"If he is a B student to many people, with chinks in his armor, so be it," said Watkins. "He knows how to do [the job]. . . ."

Not exactly a vote of confidence for a man who will control billions of public dollars and the future of the nuclear-weapons complex.

DENVER POST

SEP 5 1989

Nuke this nomination

WB

FEDERAL inspectors have found that safety problems are continuing to crop up at the Rocky Flats plant despite the increased emphasis on protecting workers and the public from its toxic and radioactive hazards.

This is particularly troubling in view of indications that Energy Secretary James Watkins is backing away from his promise to put health and safety concerns ahead of production at the nation's problem-plagued nuclear weapons facilities.

Watkins, whose safety-first vows already have prompted shutdowns at some plants, has nominated a production-oriented official to be his assistant secretary for defense programs — the person in charge of overseeing Rocky Flats and all the other bomb factories, as well as the far-flung research labs, test sites and waste dumps in this $10 billion enterprise.

The nominee, Victor Stello Jr., is director of operations for the Nuclear Regulatory Commission, which supervises the nation's commercial nuclear reactors. But he appears to have neither the technical expertise nor the personal commitment needed to help restore public confidence in the safety of the weapons complex.

Stello has been attacked by former colleagues and members of Congress as an industry lackey and a vindictive manager. They say he has watered down safety regulations and speeded up the licensing process for questionable power plants, while ignoring the need for investigations of wrongdoing, including an alleged cover-up of information pertaining to the Three Mile Island accident.

As former NRC official Robert Pollard puts it, "It is a rare occasion indeed when the public record of a nominee's past conduct discloses characteristics antithetical to virtually every attribute which would be desirable in the position to be filled."

U.S. Rep. John Dingell of Michigan, chairman of the powerful House Energy and Commerce Committee, is even more caustic. "The only benefit of moving Mr. Stello to the Department of Energy is ridding the NRC of Mr. Stello," he asserts.

Surely the Bush administration can find someone with more credibility than this to rectify the enormous environmental and safety problems that have come to light in the nation's nuclear weapons plants over the past year.

Colorado's two U.S. senators, Tim Wirth and Bill Armstrong, should bring out their Geiger counters when Stello's nomination comes up for confirmation later this fall. If he's as cozy with the industry as his critics charge, he's bound to be too hot to handle.

THE TRIBUNE

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B-6 *Wednesday, September 13, 1989* **Oakland, California**

The fox at Energy

If Victor Stello Jr. guards his new coop at the Energy Department as critics say he did at the Nuclear Regulatory Commission, the chickens had better start saying their prayers.

Stello, nominated in June as assistant secretary of energy for defense programs, has attracted a small army of detractors from his last post as executive director of operations at the NRC. Although Energy Secretary James Watkins says Stello's "wealth of experience" in regulating civilian utilities will assure that "nuclear safety takes precedence over (weapons) production," the record raises troubling questions about which value Stello really puts first.

The Senate must resolve all doubts before confirming his nomination. The position he occupies is critical to the health and well-being of millions of Americans. Recent revelations about ghastly safety lapses, radioactive releases and criminal misconduct at nuclear weapons facilities challenge energy officials to sweep clean what Secretary Watkins has called a "deeply embedded 35-year culture" of contempt for safety and the environment among federal nuclear contractors.

Stello is not the obvious candidate for that demanding job. Rep. John Dingell of Michigan, chairman of the investigations and oversight subcommittee of the House energy committee, declared last month that "the only benefit" of moving Stello from the NRC to Department of Energy "is ridding the NRC of Mr. Stello."

Even Watkins tacitly recognizes his nominee's shortcomings. "If he is a B student to many people, with chinks in his armor, so be it," he told the press.

A long series of controversies has prompted Dingell, the Union of Concerned Scientists and former members of the NRC staff to oppose the appointment:

- In 1984, the Justice Department began a two-year grand jury investigation of Stello, arising "from failures to enforce NRC regulations at Zimmer and Three Mile Island, for the coverup of information pertaining to the Three Mile Island accident, and for impairing or muzzling referrals to the Justice Department involving criminal violations of the Atomic Energy Act by regulated utilities," according to Dingell. Congress and the American people deserve to know what facts triggered that investigation.
- Investigations by two separate committees of Congress cast doubt on Stello's judgment in paying improper fees to an informant of dubious credibility who impugned the deputy director of the NRC's Office of Investigations. The committees exonerated that official and blasted Stello for waging a vendetta against him.
- In 1986, according to the NRC's top investigator, Stello coached the head of nuclear operations at the Tennessee Valley Authority on how to respond to inquiries from the NRC about charges of inadequate construction standards. This serious matter was passed to an office under Stello's control for investigation — and dropped without anyone even interviewing TVA officials.
- Robert Pollard, a nuclear safety engineer associated with the Union of Concerned Scientists, alleges that Stello gutted NRC fire safety regulations after secret meetings with utility executives and without public notice or comment.

These and other examples suggest that Stello's approach to regulating nuclear weapons contractors will be business as usual: production over safety, profits over health. The Senate owes the American people and their environment a thorough investigation of Stello's career before handing him the keys to this vital job.

THE ATLANTA CONSTITUTION

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PAGE A-14, TUESDAY, OCTOBER 24, 1989

Wrong Man for Nuclear Cleanup

The job of cleaning up the nation's frightfully mismanaged nuclear weapons program must go to a no-nonsense leader who vigorously will pursue the truth about the problems, think through solutions and then see changes properly implemented.

The White House's choice for the job, Victor Stello Jr., is not that man. In fact, Mr. Stello has a 23-year record at the Nuclear Regulatory Commission (NRC) that suggests he has none of the vital qualities needed to revamp the Department of Energy's nuclear weapons production program.

The task President Bush wants Mr. Stello to undertake is monumental: to fix the nation's H-bomb factories and make them safe. After years of neglect, corruption and profiteering, the plants are in such sorry shape taxpayers will have to spend somewhere between $18 billion and $150 billion for the cleanup.

For example, the Savannah River Plant on the border of Georgia and South Carolina has leaked radioactive material for years. Energy Secretary James Watkins himself admits the nation's 17 plants have been run down by "a culture of mismanagement and ineptitude."

To direct the effort to change the management ethic in the weapons production industry, Mr. Bush has selected the wrong bureaucrat. Mr. Stello, whose nomination is being fought by a coalition of more than 30 environmental and peace groups, is the NRC's former chief of staff. In that position, he amply demonstrated he is constitutionally incapable of being a tough defender of public safety.

Over the years, he continually intervened on behalf of the industry he was supposed to be regulating while stifling independent investigations of wrongdoing. For example, he helped conceal from the Justice Department documents that showed leak rate tests at Three Mile Island were falsified six months before the accident there in 1979. Besides the numerous instances of covering up for nuclear power companies, he has been linked by a congressional investigation to the improper use of a secret cash slush fund.

Sen. Sam Nunn (D-Georgia), is chairman of the Armed Services Committee, which must confirm Mr. Stello. Hearings are expected this fall. Reportedly, Mr. Nunn may be reluctant to fight the Stello nomination because he wants to avoid another messy battle such as the one over the John Tower nomination.

That's understandable, but this is no time for weak knees. Mr. Nunn and the rest of the Senate should reject Mr. Stello and demand that Mr. Bush find someone who is morally capable of challenging corruption in the nuclear weapons business.

Nov 15, 1989

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A flawed nominee at DOE

On paper, Victor Stello Jr. appears perfect for the job of riding herd on the nation's troubled nuclear weapons complex. He's said to be tough, technically top-notch, well-organized. He's a career government bureaucrat, so relatively low pay and tough new rules to limit Department of Energy revolving-door favoritism in the awarding of contracts presumably won't faze him. He knows how to get things done, and he's had experience at one of the toughest peacetime nuclear endeavors: picking up the pieces for the U.S. Nuclear Regulatory Commission and the industry it oversees after the Three Mile Island reactor accident in 1979.

But for several key reasons, Victor Stello Jr. isn't right for the job the White House seems determined to award him. These reasons, as described in a series of critical congressional reports on aspects of Stello's more than two-decade nuclear-regulatory career, boil down to three: judgment, credibility, fairness. The Senate Armed Services Committee, beginning its confirmation hearings on Stello today should reject this flawed nominee.

Oddly, given the litany of documented criticism, there hasn't been much congressional opposition to the Stello nomination thus far. To large degree, that appears to reflect the high esteem in which Admiral James Watkins, DOE secretary, is held on Capitol Hill.

Ohio Sen. John Glenn, who held hearings several years ago on allegations that Stello's overly cozy relationship with the nuclear power industry led him to counsel a utility executive during an NRC probe — allegations that were never proven — freely admits he was persuaded by Watkins "not to lead the charge" against Stello. Glenn, a member of the Armed Services Committee, has nonetheless questioned Stello's judgment in a more recent case where Stello authorized an NRC investigation that included paying $6,000 to an informer as part of what appeared to be a Machiavellian feud with NRC's independent investigations office. Ohio's other senator, Howard Metzenbaum, is one of five senators from states with significant nuclear-weapons-plant problems to write President Bush recently, asking that the Stello nomination be withdrawn.

The notion that no better-qualified candidate could be found is unpersuasive. Stello's technical competence is overshadowed by his flaws. More believable are reports that the Stello pick was influenced by White House Chief of Staff John Sununu, who reportedly admired Stello's ability to ram unpopular matters, such as the Seabrook, N.H., nuclear plant low-level operating license, through NRC.

One more ramrod is not what DOE needs right now. What it requires instead is an aggressive manager who will carry out needed weapons plant cleanup and reform while keeping the public's right to health and safety always in sight. The nominee who can do those things has yet to be named.

Stello Is Not the Man for NRC

L.A. Times
Pg. B-6
11/15/89

The tenure of James D. Watkins as President Bush's secretary of energy has been brief but refreshing. Watkins, a retired admiral who brought order out of chaos at the Reagan Administration's AIDS commission, has initiated a long overdue review of U.S. energy policy and has dealt forcefully with the alarming problems at the department's 17 nuclear weapons plants. But Watkins' record so far has one serious blot that would vanish if he would drop the choice of Victor Stello Jr. to be assistant secretary for defense programs in charge of the weapons program.

In choosing Stello, former chief of staff at the Nuclear Regulatory Commission, the Bush Administration clearly wanted someone who knew the nuclear industry and had a capacity for cracking heads to get jobs done. Stello may fit those criteria, but his credibility was so damaged at the NRC that his chances of fulfilling his mandate at the Energy Department are undermined before he even gets an opportunity to start. In advance of Stello's confirmation hearing before the Senate Armed Services Committee today, five Democratic senators distributed a letter urging President Bush to withdraw the Stello nomination. The senators, including California's Alan Cranston and Nevada's Richard Bryan, said that even if Stello is confirmed, the controversy surrounding him would critically impair his ability to run the department's weapons program. They are correct.

During his time at the Nuclear Regulatory Commission, Stello became embroiled in several curious controversies and exhibited questionable behavior for a regulator of such a sensitive industry. In one instance, he approved a $6,000 cash payment to a former utility company worker to obtain information that would imply dereliction of duty on the part of another high NRC staff official. The propriety of the payment has been under investigation in Congress. A Senate subcommittee reported that the affair appeared to be motivated as much by "personal and professional animosity" as by safety concerns. Rep. Peter H. Kostmayer (D-Pa.) claimed that Stello's testimony before the Senate on the payment matter contradicted what he told a House subcommittee. The House subcommittee staff said the payment was part of "a wasteful investigation with revenge the primary motive."

As head of the NRC investigation of the Three Mile Island accident, Stello was accused of failing to pursue allegations that TMI operators had falsified cooling system leak rates to keep the reactor running and of withholding information about the severity of the accident. Critics have brought other claims of Stello's alleged interference in NRC safety enforcement.

Not all of the claims have been substantiated. But this critical job demands an appointee who is above any such suspicion, a person with unimpeachable credibility. Adm. Watkins would do well to renew his search for such a person.

Senator **BINGAMAN**. Thank you very much. I am informed that one of the witnesses that we thought was not able to attend today and who had asked to make a presentation is, in fact, here. Mr. Robert Backus, could you come up and participate in this panel and give us your statement?

Senator **MCCAIN**. Mr. Chairman, could you please tell us who Mr. Backus is?

Senator **BINGAMAN**. Mr. Backus is the attorney for the Seacoast Antipollution League. He was a witness recommended by Senator Humphrey.

Senator **MCCAIN**. Thank you, Mr. Chairman.

Senator **BINGAMAN**. I think the Senator was not here when I made that announcement earlier. We are very pleased to have you here. Please go right ahead with your testimony and summarize whatever comments you have.

STATEMENT OF ROBERT A. BACKUS, SEACOAST ANTIPOLLUTION LEAGUE

Mr. **BACKUS**. Thank you, Senator. Thank you for your hospitality. I did not think air transportation was available today, but it turned out to be and I am glad to be here.

My name is Robert Backus. I am a lawyer practicing in Manchester, New Hamsphire. Since 1972 I have represented various citizen groups in regard to the licensing of the Seabrook Nuclear Plant, a large and very controversial reactor located on the New Hampshire sea coast. Seabrook is located within 2 miles of barrier beaches at Hampton and Seabrook, New Hampshire, and these beaches are on any hot day in the summer packed with bathing-suit clad beachgoers.

Throughout the proceedings for an operating license for the Seabrook Plant, Victor Stello has served as the Executive Director of Operations for the NRC. In this position, he has determined the staff positions on Seabrook.

In doing so, he has, in my opinion, not only actively sought to undermine the NRC's own regulations which require an "adequate" emergency plan as a licensing condition, but he has interfered with another Federal agency, FEMA, which had determined that effective protection of the thousands on the Seabrook area beaches was a practical impossibility. He did this notwithstanding an executive order issued by President Carter and a consequent memorandum of understanding between the NRC and FEMA that designated FEMA, not the NRC, to be the lead agency in judging the effectiveness of offsite emergency planning around nuclear plants.

In June 1987, FEMA first published its official position that the New Hampshire emergency plan for Seabrook could not be approved because it appeared that "thousands of people could be unable to leave during an accident at Seabrook involving a major release of radioactivity" in a timely manner.

In October, at the beginning of the licensing hearings for the Seabrook Plant on the New Hampshire plan, the NRC staff attorney, acting at the direction of Mr. Stello, filed an outline of proposed rebuttal testimony indicating an intention to oppose FEMA's official position. Now, this was extraordinary, because the NRC ordinarily sponsors FEMA witnesses as its own experts on offsite emergency plans and does not, as in this case, contest with FEMA's experts.

On January 12, 1988, FEMA announced through its attorney that it was going to review and might well change its position on Seabrook. January 13, one day later, FEMA counsel announced its position was going to be fine-tuned, but its position would not change. Two days later Victor Stello called a top FEMA official on this matter, Grant Peterson, now the Acting Director of FEMA, to indicate his "concern" about what had happened at the hearing. Mr. Stello had never previously called Mr. Peterson. He asked to arrange a meeting.

The meeting was scheduled for the next business day, January 19. Although the FEMA official, Mr. Thomas, who was the designated witness for the agency, was indeed in Washington for consultation on the Seabrook plans, he was expressly excluded from the meeting. Although this meeting appears to have been of enormous importance, involving top-level officials from both FEMA and the NRC, no official notes were kept.

Mr. Stello, according to FEMA witnesses who testified, threatened "total war" between FEMA and the NRC if FEMA did not back off on its so-called attempt to interpret the NRC regulations. Mr. Stello subsequently said this was necessary so that the two agencies would have "consistent positions" on the Seabrook emergency plan. In other words, Mr. Stello had no problem opposing FEMA's position on Seabrook in October when that position was adverse to the issuance of a license, but he found it necessary in January to have consistent positions, so long as they were consistently in favor of adequacy and therefore a license for Seabrook.

Six days later FEMA filed interim testimony stating that if the New Hampshire Office of Emergency Management would further consider the possibility of sheltering the thousands on the beaches instead of evacuating them that FEMA could—that was his word, could—find the New Hampshire emergency plans adequate. New Hampshire responded and said that it appeared sheltering the beach-goers was an option of very limited utility, very unlikely to be used. FEMA thereupon filed testimony saying that the plans were now to be found adequate.

FEMA acknowledged, in changing its position 180 degrees, that it was not on the basis of new facts. The facts at Seabrook had not changed. The FEMA official who had been prepared to carry out the defense of the prior FEMA position, Mr. Thomas at FEMA Region I, was removed from any further responsibility in regard to Seabrook emergency plans and deleted as a witness.

Now, Mr. Stello did more than intervene with FEMA's position in the Seabrook hearings. He was instrumental in advocating rule changes suggested as the head of the NRC staff and adopted by the commissioners, intended to facilitate the licensing of Seabrook. These included a rule change adopted in November 1987 intended to permit a lower standard for judging the adequacy, so-called, of a utility emergency plan now proposed to be used in six Massachusetts communities within 10 miles of Seabrook, and a further rule change eliminating the requirement for any public siren or alerting system as a condition for low-power testing.

It is my belief that Mr. Stello has perverted his duty of enforcing the NRC emergency planning regulations at Seabrook into a concerted effort to destroy those regulations in an effort to make possible the licensing of Seabrook in the face of facts which would prohibit that.

It is further my belief that in his attempt to facilitate the licensing of Seabrook, he has attempted to cause a sister Federal agency, FEMA, and one intended to have lead responsibility in judging emergency plans, to reverse its position in the absence of any facts justifying such a change.

I have a fuller statement of the basis for these conclusions and transcript references I believe substantiating the factual assertions I have made attached to my statement which I would ask to have incorporated in the record of the committee's proceedings.

I thank you very much, Senator.

[The statement of Mr. Backus follows:]

November 16, 1989

STATEMENT OF ROBERT A. BACKUS BEFORE THE SENATE ARMED SERVICES COMMITTEE

My name is Robert A. Backus. I am a lawyer practicing in Manchester, New Hampshire. Since 1972, I have represented various citizens' groups in regard to the licensing of Seabrook Station, a large and extremely controversial nuclear plant on the seacoast of New Hampshire which is awaiting an NRC operating license. Seabrook is located within two miles of barrier beaches in Hampton and Seabrook, New Hampshire that are packed with bathing suit clad beach-goers on any hot day between May and September.

Throughout the proceedings for an operating license for Seabrook, Victor Stello has served as the Executive Director of Operations for the NRC. In this position he has determined the staff position on Seabrook. In doing so he has, in my opinion, not only actively sought to undermine the NRC's own regulations which require an "adequate" emergency plan as a licensing condition, but has interfered with another federal agency, FEMA, which had determined that effective protection for the thousands on the Seabrook area beaches was a practical impossibility. He did this notwithstanding an Executive Order from President Carter and a consequent Memorandum of Understanding between NRC and FEMA that designated FEMA as the "lead agency" in judging the effectiveness of off-site radiological emergency planning. 50 Fed. Reg. 15, 485.

In June 1987, FEMA first published its official position that the New Hampshire Emergency Plan for Seabrook could not be approved because it appeared that "thousands of people could be unable to leave during an accident at Seabrook involving a major release of radioactivity" in a timely manner. (See Attachment A).

In October, at the beginning of licensing hearings on the New Hampshire Emergency plan, the NRC staff attorney, acting at the direction of Mr. Stello, filed an outline of proposed rebuttal testimony, indicating an intention to oppose FEMA's official position. This was extraordinary, because NRC normally sponsors FEMA's witnesses as its own "experts" on off-site emergency plans. (See Attachment B).

On January 12, 1988, FEMA announced, through counsel, it was going to review, and might well change, its position on Seabrook. On January 13, one day later, FEMA counsel announced its position was going to be fine tuned, but its position would not change. Two days later, Victor Stello called a top FEMA official on this matter, Grant Peterson, now acting director of FEMA, to indicate his "concern" about what had happened at the hearing. Mr. Stello had never previously called Mr. Peterson. He asked to arrange a meeting. (Transcript excerpts, Attachment C).

That meeting was scheduled for the next business day, January 19. (January 18 was a holiday.) Although the FEMA official who was the designated witness for the agency was in Washington for consultation, he was expressly excluded from the meeting. (See

INTENTIONAL
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Attachment C at p. 13036). Although this meeting appears to have been of enormous importance, involving top level officials from both FEMA and NRC, no official notes were kept. Mr. Stello, according to FEMA witnesses who testified, threatened "total war" between FEMA and NRC if FEMA didn't back off on its so-called attempt to interpret NRC regulations. Mr. Stello subsequently said this was necessary, so that the two agencies would have "consistent positions" on the Seabrook emergency plan. (See Attachment C at p. 13027).

In other words, Mr. Stello had no problem with opposing FEMA's position in October, when that position would not permit a license for Seabrook, but he found it necessary to have the agencies have "consistent positions" only when those positions would support licensing.

A mere six days later, FEMA filed "interim" testimony stating that if a New Hampshire Office of Emergency Management would further "consider" the idea of "sheltering" the beach-goers instead of evacuating them, FEMA "could" find the New Hampshire Emergency Plans adequate. New Hampshire responded that sheltering was an option of very "limited" utility, and in fact unlikely to be utilized. FEMA thereupon changed its opposition to the adequacy of the emergency plan for Seabrook, and now found the plan to be fully adequate to support licensing. FEMA acknowledged, in doing so, that its change of position was not on the basis of any "new facts." The FEMA official who had been prepared to carry the defense of the prior FEMA position was removed from any further responsibility in regard to Seabrook emergency plans, and eliminated as a witness.

Mr. Stello did more than intervene with FEMA's position in the Seabrook hearings. He was also instrumental in advocating NRC rule changes, suggested by NRC staff, and adopted by the NRC Commissioners, intended to facilitate the licensing of Seabrook. These included a rule change, adopted in November, 1987, intended to permit a lower standard for judging the "adequacy" of a utility emergency plan, now proposed to be used in six Massachusetts communities within ten miles of Seabrook, and a rule change eliminating the requirement for a public alerting system as a condition for low power testing operation. (See 52 Fed. Reg. 42, 078-87).

It is my belief that Mr. Stello has perverted his duty of enforcing NRC emergency planning regulations at Seabrook into a concerted effort to destroy those regulations in an effort to make possible the licensing of Seabrook. It is further my belief, that in his attempt to facilitate the licensing of Seabrook, he attempted to cause a sister federal agency, and one intended to have lead responsibility in judging emergency plans, to reverse its position, in the absence of any facts justifying such a change of position. A fuller statement of the background of NRC's handling of the Seabrook issue is attached as Attachment D, along with a November 15, 1989 Concord Monitor editorial calling for an investigation of NRC and the FEMA "flip-flop" and an editorial cartoon from the Boston Herald, as Attachment E.

I do not believe a person who has worked to undermine his own agency's safety requirements, mandated by Congress, should be entrusted with the awesome task of cleaning up the nation's nuclear production facilities.

RAB

ATTACHMENT A

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
Public Service Co. of New Hampshire, et al.) Docket No. 50-443-OL
) 50-444-OL
(Seabrook Station, Units 1 & 2)) Offsite Emergency
) Planning Issues

FEMA PRE-FILED TESTIMONY

The Federal Emergency Management Agency (FEMA) hereby serves on the parties to this proceeding its prefiled testimony on contentions on the New Hampshire Radiological Emergency Response Plan. FEMA notes, for the record, that its review of issues addressed therein is ongoing.

H. Joseph Flynn
Assistant General Counsel
Federal Emergency Management Agency

Washington, D.C.
September 11, 1987

NECNP CONTENTION RERP-8 (Cont.)

(1) The primary guidance document used by FEMA and the RAC in reviewing off-site emergency plans is NUREG-0654, FEMA REP-1, Rev. 1, a document jointly developed by FEMA and the NRC. That guidance document indicates on p. 13 that "(t)he range of times between the onset of accident conditions and the start of a major release is of the order of one-half hour to several hours". This statement is further clarified on p. 17, Table 2 to indicate that (a) the major portion of a release may occur in a time period ranging from as little as one-half hour to one day after the release begins and (b) that the travel time of the release to exposure point can range from one-half hour to two hours at five miles, and one hour to four hours at ten miles.

(2) On peak summer days there are thousands of beachgoers in the Seabrook EPZ in areas beginning approximately 1.7 miles from the plant. The current New Hampshire plans contemplate evacuating the many thousands of beachgoers who have access to no adequate shelter as a protective action in the event of an accident at Seabrook. We understand that the plans contain no consideration of sheltering the "day trippers" because on summer days when there are a large number of these people, it is not possible to find reasonably accessible shelter for them. There are an additional number of persons who would be in or have access only to shelter in unwinterized cottages and motel rooms. The protection afforded by sheltering in these structures will definitely be less than that afforded by a normal wood frame house.

(3) The Evacuation Time Estimate for the Seabrook EPZ submitted by the State of New Hampshire indicates at pp. 10-1 et.sec. that in good weather when the beaches are at 60 to 100 percent of capacity it will take three and one-half hours to clear the beaches, and a total of from four hours and fifty minutes to five hours and fifty minutes to evacuate all the population on the beaches from the EPZ. In some situations such as sudden bad weather following a peak summer day, the total evacuation time for portions of the EPZ range up to seven hours and fifty minutes.

Therefore, using the standard guidance for the initiation and duration of radiological releases, and the current New Hampshire RERP including ETE, it appears that thousands of people could be unable to leave during an accident at Seabrook involving a major release of radioactivity without adequate shelter for as much as the entire duration of that release. Therefore, until these issues are resolved even if all the other inadequacies and deficiencies cited in the RAC Reviews of the New Hampshire Plans, and the Review of the Exercise of these plans were to be corrected, FEMA would not be able to conclude that the New Hampshire State and local plans to protect the public in the event of an accident at the Seabrook Nuclear Power Plant are adequate to meet our regulatory standard that such plans "adequately protect the public health and safety by providing reasonable assurance that appropriate protective measures can be taken offsite in the event of a radiological emergency." (See, 44 CFR 350.5(b)).

ATTACHMENT B

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

[illegible]
5/26/88.

October 5, 1987

Ivan Smith, Esq., Chairman
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Gustave A. Linenberger, Jr.
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dr. Jerry Harbour
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

In the Matter of
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, ET AL.
(Seabrook Station, Units 1 and 2)
Docket Nos. 50-443, 50-444 Off-Site Emergency Planning

Dear Administrative Judges:

In a filing dated September 4, 1987, the NRC Staff advised the Board and parties that it may wish to submit rebuttal testimony with respect to the beach shelter issue. In accordance with the Licensing Board's "Memorandum and Order (Clarifying Presentation of Rebuttal Testimony)", dated September 9, 1987, the Staff hereby submits a draft outline of the areas it may wish to address in its rebuttal testimony, in the event the Staff determines following cross-examination that such rebuttal testimony is appropriate.

Sincerely,

Sherwin E Turk

Sherwin E. Turk
Counsel for NRC Staff

cc: Service List

Proposed Rebuttal Testimony of NRC Staff Concerning NHRERP Protective Actions For Seabrook Area Seasonal Beach Populations

I. Introduction: The Function and Objectives of Emergency Planning.

A. The Goal of Emergency Planning Is To Mitigate the Radiological Impacts of An Accident If A Release of Radiation Should Occur.

B. The Overall Objective of Emergency Planning Is To Provide Dose Savings (and in Some Cases, Immediate Life Saving) for A Spectrum of Accidents That Could Produce Doses in Excess of the Protective Action Guides.

C. The Planning Basis Requires Applicants and Governmental Organizations to Demonstrate A Capability for Prompt Notification of the Public.

D. Planning Is Not Required for Any Particular Accident, Nor Is Planning Required to Assure the Avoidance of Any Particular Dose Or to Demonstrate That Any or All of the EPZ Can Be Evacuated Within Any Particular Time Frame.

E. The Provision of 10 C.F.R. § 50.47(b)(10) That There Be "A Range of Protective Actions" Does Not Require That There Be A Range of Protective Actions For All Accidents at All Times and at All Locations Within the EPZ.

II. The Provisions Contained In NHRERP Revision 2 for Protection of Seabrook Area Seasonal Beach Populations Comply With the Guidance Contained in NUREG-0654, Except to the Extent that Deficiencies Otherwise Exist In the NHRERP.

A. The NHRERP Provides A Range of Protective Actions for Beach Areas During Most of the Year.

B. During the Beach Season, the NHRERP Provides for Early Consideration, At the "Alert" Level, As to Whether to Restrict Public Access to the Beaches or Close the Beaches and Commence Early Evacuation of Beach Areas Before a General Evacuation Would Commence.

C. The Beach Areas Are Equipped With Sirens Capable of Providing Both Tone Alerts and Public Address (Voice) Messages, in Order to Afford Seasonal Beach Populations With Prompt Notification and Instructions to Follow in An Emergency.

D. The NHRERP Provides for Traffic Control and Other Emergency Response Personnel to Assist the Public In Evacuating Beach Areas.

E. Evacuation Is the Preferred Protective Response for Seabrook Area Seasonal Beach Populations.

F. The Absence of Sheltering As An Alternative Protective Response for Seabrook Area Seasonal Beach Populations Does Not Contravene NRC Regulations and Guidance, and Is Consistent With the Level of Planning In Place at Other Nuclear Plant Sites.

III. Conclusion: The NHRERP Provides Dose Savings for A Spectrum of Accidents That Could Produce Doses In Excess of the PAGs. Consistent With 10 C.F.R. § 50.47(a), the NHRERP Provides Reasonable Assurance That Adequate Protective Measures Can and Will Be Taken, With Respect to Seabrook Area Seasonal Beach Populations, In the Event of A Radiological Emergency.

ATTACHMENT C

UNITED STATES NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)
) Docket Nos.
PUBLIC SERVICE COMPANY OF) 50-443-OL
NEW HAMPSHIRE, et al.,) 50-444-OL
) OFF-SITE EMERGENCY
(SEABROOK STATION, UNITS 1 AND 2)) PLANNING

EVIDENTIARY HEARING

Tuesday,
January 12, 1988

Room 308
Legislative Office Building
New Hampshire Statehouse
Concord, NH

The above-entitled matter came on for hearing, pursuant to notice, at 9:01 a.m.

BEFORE: JUDGE IVAN W. SMITH, CHAIRMAN
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

JUDGE JERRY HARBOUR, MEMBER
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

JUDGE GUSTAVE A. LINENBERGER, JR., MEMBER
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

APPEARANCES:

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For the Federal Emergency Management Agency:

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For the Commonwealth of Massachusetts:

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CAROL SNEIDER, ASST. ATTY. GEN.
STEPHEN H. OLESKEY, ESQ.
Commonwealth of Massachusetts
One Ashburton Place, 19th Floor
Boston, MA 02108

Coalition's objection to that, and our feeling that since we're all here and Mr. Thomas is here, that we would urge the Board to hear that evidence, put that evidence on the record this week.

If FEMA wishes to supplement that, that's of course their right to do so, but it's our feeling that we're entitled to have on the record FEMA's views as of this week based on al the information that's available to them, and we would urge th Board to hear that; we're ready to hear that.

JUDGE SMITH: Mr. Flynn?

MR. FLYNN: Your Honor, at the conclusion of the last week of hearings you made the point rather clearly that the weight to be given FEMA's rebuttable testimony depended in part on the weight that FEMA gave the advice of the RAC, and we took that to heart.

There was a RAC meeting. We heard the views of the RAC members on the issue.

Now, getting FEMA to incorporate those views into its testimony is something like turning an ocean liner around. It doesn't happen in an instant.

What I'm asking for is the time to allow FEMA to reflect on that and incorporate the views in its testimony. If the testimony is heard this week, you'll get a confused picture.

JUDGE SMITH: Do you have to go back to the RAC understand in weighing that testimony.

So --

JUDGE SMITH: If -- would it make sense to begin with, to begin with Mr. Thomas or someone from FEMA Regional Office, Mr. Thomas, I assume, to give us a factual explanation of what happened in the RAC committee, so that we can determine if such be the case that there has been or has not been any change in any factual data, technological considerations, that it's been a change in whatever.

Then we might have a better feeling for what additional discovery would be required. If there has been no new technological data, no new facts established during 1987, then the need for discovery, it seems to me, would be not perhaps eliminated, but the scope of it certainly would be reduced.

Would that make sense to at least begin to have on the record what considerations took place at the RAC meeting, so at least we can identify whether or not there have been any technical bases for any change in positions?

MR. OLESKEY: Yes, that would be a very good way to begin.

MR. FLYNN: Your Honor, I think I can shed some light on what has gone on and perhaps aid you in the decision that you need to make.

In fact, there has not been any new technical information which has caused us to reexamine our earlier position. The facts that we are looking at now are the same facts that we've been looking at all along.

What is driving the reexamination of our position is principally a question of the interpretation of our regulations, particularly as they relate to the NRC's regulations and interpretation of the requirements of the guidance expressed in NUREG-0654.

And if our position does change, and I am not saying that it will or it won't, it will be for that reason, that we've refined our thinking on what the regulations and the guidance mean.

(Continued on the next page.)

UNITED STATES NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:	
	Docket Nos.
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, et al.,	50-443-OL 50-444-OL
	OFF-SITE EMERGENCY
(SEABROOK STATION, UNITS 1 AND 2)	PLANNING

EVIDENTIARY HEARING

Wednesday,
January 13, 1988

Room 308
Legislative Office Building
New Hampshire Statehouse
Concord, NH

The above-entitled matter came on for hearing, pursuant to notice, at 9:02 a.m.

BEFORE: JUDGE IVAN W. SMITH, CHAIRMAN
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

JUDGE JERRY HARBOUR, MEMBER
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

JUDGE GUSTAVE A. LINENBERGER, JR., MEMBER
Atomic Safety and Licensing Board
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Washington, D.C. 20555

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For the Federal Emergency Management Agency:

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One Ashburton Place, 19th Floor
Boston, MA 02108

JUDGE SMITH: Come to order, please.

Ladies and gentlemen, let's come to order, please.

Mr. Flynn?

MR. FLYNN: Thank you, Your Honor.

Over the last day or so I've received some comments that indicate to me that I need to clarify some of the remarks that I have made in the past two days. Mr. Strome has brought it to my attention that I made some remarks that suggest that FEMA has no part in the development of the radiological emergency response plans for the State of New Hampshire.

Technically that's incorrect.

FEMA does play a role, that is a role of technical assistance as illustrated by testimony earlier in the proceedings about technical assistance on the shelter survey and the personnel assessment summary.

The point that I was trying to make when I made the remarks is that the ultimate decisions about what goes into the New Hampshire plan or doesn't go into the New Hampshire plan is made by the State of New Hampshire.

The other thing that I need to clear up is I made the statement yesterday, that one of the issues that FEMA was looking at was best efforts. And in the reaction that I've gotten to that statement I realized that the term, best efforts, means a lot of different things to different people, including in some cases, no efforts.

And I wanted to make it very clear that any standard which amounts to making no efforts is not under consideration, has never been under consideration, and that is not by any account an appropriate standard to apply to emergency planning.

The standard to which FEMA is committed, which is the policy of FEMA and has always been the policy of FEMA, is that before FEMA will advise the NRC the plans are acceptable it must have reasonable assurance that adequate protective measures can be taken to protect the public in the event of an accident.

The other point which I wish to make is that particularly in view of the nature of things under consideration, namely that there is no new technical information, FEMA is fully committed to preparing its testimony with whatever supplement to the testimony may be necessary and proceeding with whatever order, whatever scheduling order this Board establishes today.

MR. TRAFICONTE: Your Honor, we'd like to propose the following, in terms of the things that we perceive still need to be addressed and if possible, address today.

Picking up on Mr. Flynn's last point, as I understand what we discussed yesterday and the day before, FEMA is going to resolve its position on its own testimony by the 22nd of January, if I recall the date, accurately?

MR. FLYNN: Yes.

MR. TRAFICONTE: Obviously, how FEMA comes out at the substantive end of that decision, affects each of the parties in a different way depending on the result, substantive result. And I am not sure that we're going to be able to meaningfully argue or discuss a schedule for this proceeding unless or without waiting until we know what FEMA's substantive result is, because the Mass AG, as one Intervenor, if FEMA changes its position would obviously argue that we need a substantial amount of time for discovery and for packaging our own response.

We would then be in a position, of course, of rebutting that rebuttable presumption which would now go the other way and we would argue for more time. If, on the other hand, the ocean liner is not turning around but continues off, then we are essentially in the same situation that we thought we were in when this week began.

So, there is an element of an arbitrary almost caprice, it seems to us, to argue substantive schedule until now, instead of waiting until after the 22nd, when we have a substantive position.

It which point, it seems to us we could have a telephone conference where all the issues could of which I think we are all aware, we could voice our concerns, argue over an appropriate schedule.

At least at that point, we would know who is fighting for time and who isn't.

MR. FLYNN: Your Honor, I have the answer to that question and I really owe it to everybody to clear that up right now.

We are talking about fine tuning and , as I said earlier today one of our objectives in having the RAC meeting was to clear up the question of were we -- what use we were going to make of the advice of the RAC.

We are preparing supplemental testimony to answer that question, to reflect how FEMA has reacted to the advice of the RAC; we all know what the advice of the RAC is now. I suggest to you that -- you know, I can't give you every detail but our position is not going to be very different from what Mr. Thomas said at the RAC meeting.

And he has reported himself as saying or very different from what I reported to the Board as having been said at the RAC meeting, namely we're not moving from our earlier finding of reasonable assurance until we have the treatment of the discussion of the sheltering option.

Whatever the state decides to do with that, we need -- we are reviewing the plans as essentially incomplete until that issue is dealt with.

MR. TRAFICONTE: Your Honor, I'm hearing something that maybe it is just me, but I'm hearing something different from Mr. Flynn right now, than I had heard yesterday.

JUDGE SMITH: New, in addition?

MR. TRAFICONTE: Well, new and additional perhaps, yes.

But I was under the impression yesterday that the testimony as it was prefiled, that they were not prepared to go forward and officially proffer that testimony as prefiled.

And if I understand Mr. Flynn today, if I understand Mr. Flynn now, it's, they are prepared to do that and they are going to prepare a supplement to it, but that in terms of which side of the fence the rebuttable presumption's going to sit on, it appears it is not going to be moved from where it is now.

And I thought that was the case yesterday.

MR. FLYNN: I will concede that what I said earlier was certainly ambiguous. That I avoided saying, in fact, in response to a direct question from Mr. Dignan, I avoided saying whether it would be, whether we were going to change from an overall finding of inadequate to adequate.

I've talked with the people in Washington since then and I mean again, I'm not prepared to say what the details will be, but I've gotten a very clear indication that the position we will be taking is that which we have already stated.

JUDGE SMITH: The position that Mr. Thomas took in the RAC meeting?

MR. FLYNN: Yes.

JUDGE SMITH: Okay.

JUDGE HARBOUR: How does that --

MR. FLYNN: Differ?

JUDGE HARBOUR: -- coincide with the prefiled testimony that we have?

MR. FLYNN: The prefiled testimony is quite brief, and it doesn't say a great deal about the reasoning behind the position.

It doesn't reflect the input of the RAC. You have heard a great deal of history about how the second Bores memo came out at just the same time that we had to file a statement of position.

So, that suddenly became up in the air. Now, we need to go back to say we have heard from the RAC and obviously what the majority of the RAC has said is not what I'm saying to you now and that has to be explained.

That's why we need the time to prepare additional testimony.

JUDGE SMITH: But you said that you could live by any schedule we set but --

MR. FLYNN: Oh, yes, again, I have gotten very clear direction from the management at FEMA that we're not attempting to delay this hearing. We want, we are prepared to go ahead.

JUDGE SMITH: All right, so you are going to come up with new testimony and who is going to be your witness?

MR. FLYNN: That's a good question, Your Honor.

I assume that it will be Mr. Thomas, there may be an additional witness but that may change.

JUDGE SMITH: And that is the way in which FEMA is going to present its regulatory position and the rebuttable presumption is by the testimony that you will prepare for this hearing?

MR. FLYNN: Well, yes.

JUDGE SMITH: And the testimony you expect will have the rationale in it?

MR. FLYNN: Yes.

JUDGE SMITH: And I expect to be hearing from you, Mr. Dignan.

MR. DIGNAN: I'll see as many of Joe's cards as he wants to show before I play, Your Honor.

MR. BACKUS: Can I ask Mr. Flynn a clarifying question?

JUDGE SMITH: Yes, please, let's do.

MR. BACKUS: Mr. Flynn said yesterday and this is what got us all, I think, quite interested, he used the analogy when turning an ocean liner around which takes quite a bit of time and ocean.

And that to me indicated that there was at least the possibility that the FEMA position might be going in a different direction than it was going in the prefiled testimony.

Am I now correctly hearing you, Joe, that the ocean liner is not going to be turned around and may deviate course a few degrees?

It's going down the same path of travel it's been on since June 4th, when the testimony was prefiled?

MR. DIGNAN: With no starboard engine.

MR. BACKUS: Being oared by the New Hampshire Attorney General's office?

MR. TRAFICONTE: Or loading coal with a fire, is more like it.

JUDGE SMITH: The person who comes up with the iceberg is in big trouble.

We've had enough of it.

(Laughter.)

MR. BACKUS: I shouldn't use the analogy but I just want to know is Mr. Flynn saying, it is now, that any inference that he gave yesterday that the FEMA position on the adequacy of the New Hampshire plans might change as we are gone and the position is going to be the same with testimony to refine that position in light of the RAC review we have been discussing.

MR. FLYNN: Mr. Backus you are correct. I think I have created a furor that I didn't need to here, and I will just admit to some human frailty.

I misinterpreted some of the discussions that were going on in FEMA. I thought I had a clear understanding of the state of the decision making and I didn't, and that has been clarified for me.

And the clear guidance that I have gotten in the last day or so is that our position is that with respect to the beach population the plans are inadequate.

They are inadequate because we don't have enough information that the plans are incomplete with respect to whether and when sheltering would be considered for the beach population and, at this point, we're not prepared to say the plans are adequate. That's essentially the position. It's --

MR. DIGNAN: Mr. Flynn, could I make an inquiry?

MR. FLYNN: Yes.

MR. DIGNAN: I understand the position, but I also understood Mr. Thomas to testify the RAC has not reviewed, so far as I know, FEMA has not reviewed the shelter study that has been sitting down there for I don't know how long.

Is that FEMA's position? That they are going to take this position and not have reviewed the shelter study which has been there since -- Mr. Strome can help me?

MR. STROME: Some time in August.

MR. DIGNAN: Since August?

MR. FLYNN: All I can say in response to that, Mr. Dignan, is that is an excellent question and that was something that we certainly need to look at.

I sure hope they got an excellent answer.

2876 [illegible]

UNITED STATES NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:	)	
	)	
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, et al.,	)	Docket Nos. 50-443-OL 50-444-OL OFF-SITE EMERGENCY PLANNING
(SEABROOK STATION, UNITS 1 AND 2)	)	
	)	

EVIDENTIARY HEARING

Thursday,
May 26, 1988

Room 302
Legislative Office Building
Concord, New Hampshire

The above-entitled matter came on for hearing, pursuant to notice, at 10:35 a.m.

BEFORE: JUDGE IVAN W. SMITH, CHAIRMAN
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

JUDGE GUSTAVE A. LINENBERGER, JR., MEMBER
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

JUDGE JERRY HARBOUR, MEMBER
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

JUN 8 1988

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For the New England Coalition against Nuclear Pollution:

ELLYN R. WEISS, ESQ.
Harmon & Weiss
2001 S Street, N.W.
Washington, D.C. 20009

BY MR. BACKUS:

Q Was this the first time you'd ever had a call from Mr. Stello?

A (Peterson) I believe it was.

Q Okay. And you said yesterday that he was surprised and concerned about reports about the FEMA position; is that right?

A (Peterson) I don't know if that's exactly the way I said it, but I think in context it's generally -- it certainly is correct, Mr. Backus, that he showed concern relative to some briefing or information he had received about the hearings that were going on here.

Q Did you take it from that, Mr. Peterson, that his call might have been related to the statements we've been discussing that FEMA counsel had made on the record on the 13th?

MR. TURK: Is this speculation that you're asking for, Mr. Backus?

MR. BACKUS: We'll ask him if he knows.

THE WITNESS: (Peterson) Restate your question. I'm sorry.

BY MR. BACKUS:

Q Did anything Mr. Stello said to you indicate that his call was prompted by the statements that FEMA counsel had made at these hearings in the prior few days?

MR. DIGNAN: It's a good answer; it's a better objection. My problem is to throw out "interpret or utilize." To interpret a regulation is one thing; to utilize is quite another. So I object to it as being a compound question.

JUDGE SMITH: Start again.

MR. BACKUS: Let me withdraw it.

BY MR. BACKUS:

Q When did Mr. Stello threaten there could be war between your agencies?

A (Peterson) It had to do with the shelter question, and if we interpreted his regulations to mean that we, FEMA, had to require sheltering, then how would he respond to that. And that's, you know, we're paraphrasing here. But it had to do with the fact that if we required sheltering and interpreted his regulations to say that, then how would NRC respond.

Q Okay.

A (Peterson) And I believe I had commented a little differently first and did not get the definitive answer I wanted out of the meeting.

Q Now, was the predicate to that, Mr. Peterson, something you might have said along the lines, we may conclude that you -- your regulations, NRC, require sheltering; did you say something like that?

A (Peterson) I think I kept it in the interpret mode.

Q In other words, you said, we might interpret your requirements to require sheltering?

A (Peterson) We were -- I believe that's where I was. That if we were to interpret your regulations or say that your regulations required sheltering, and stood on that, then how would you respond. Paraphrased.

Q And what did he say?

A (Peterson) He said basically that if we interpreted his regulations to require sheltering and utilized that premise, that then we would go to war over that issue.

Q Okay. And I take it, that immediately disabused you of any notion that NRC might have any doubt that their regulations required sheltering?

A (Peterson) Well, I think we were getting a pretty strong signal that they didn't think we should be interpreting their regulations in that way. First, probably we shouldn't be interpreting their regulations.

And secondly, that if you used mine -- if we used my analysis that we would be on a confrontation course between the two agencies.

Q Okay. And so there was also a concern about you interpreting their regulations?

A (Peterson) Well, I think I threw that in there.

Q And that didn't sit very well with Mr. Stello either; correct?

A (Peterson) I think his response was pointed.

• • • •

MR. DIGNAN: Wait a minute. Mr. Backus, that was read out of context. The whole sentence is, "This was a meeting of headquarters representatives from two agencies," preceded the words, "topics also dealt with Seabrook."

MR. BACKUS: Okay.

MR. DIGNAN: And I object to that question, that's out of context.

MR. BACKUS: All right. Let's read some more of it.

MR. DIGNAN: Are you withdrawing it?

MR. BACKUS: Yes, I'm withdrawing it.

JUDGE SMITH: Restate it.

BY MR. BACKUS:

Q Okay. "It was at that meeting," I'm reading now starting with the third sentence here --

A (Peterson) I'm sorry, sir, are we on the front page?

Q No, we're on page two the first paragraph.

A (Peterson) Page two, okay. And you're starting with what?

Q Well, I'm -- well, let's start with the second sentence: "At the meeting on January 19th, 1988 there were several topics discussed including the question of the sheltering of the beach population. It was at that meeting that the NRC reiterated its position that sheltering is not a requirement under the NRC regulations. This was a meeting of headquarters representatives from two agencies and the discussion topics also dealt with a variety of issues unrelated to Seabrook.

Therefore, we did not consider it necessary or the best use of this time to include Mr. Thomas in the meeting, although he was in Washington at that time working with the FEMA Office of General Counsel." Correct?

A (Peterson) That's what it says.

Q Okay. "And he was working with the Office of General Counsel in regard to testimony that might be developed concerning Seabrook." Is that right?

A (Peterson) I believe I said that earlier.

Q Okay. Was he in fact excluded from this meeting?

A (Peterson) He was never invited.

Q Okay.

A (Peterson) This was a high level meeting of headquarters people, initially the parameters were established, not below Mr. Krimm, as I understood it, you know, plus attorneys. But, and I think this is pertinent, when Mr. Stello arrived he had a larger entourage than we anticipated. And I understood there were some technical people there from his headquarters.

And so, I asked a couple -- I don't know how that happened, but I asked at least that we have a technical person there from headquarters.

Q So as you said, Mr. Stello arrived with more people

ATTACHMENT D

HOW THE NRC PLANS TO LICENSE SEABROOK

November 1979, ten years ago, was the originally-projected in-service date for Seabrook, Unit 1. 1979 was also the year that produced the event that has kept Seabrook from operating throughout most of the past decade: the nuclear accident at Three Mile Island.

TMI blew away the NRC's assumption that an accident requiring off-site emergency measures, such as evacuation, was simply not a credible event. In 1980, as a result of the accident, and congressional action requiring it to do so, the NRC adopted a regulation which, for the first time, required an "adequate" emergency plan as a condition for obtaining a nuclear plant operating license. The Commissioners specifically stated that, as a result of TMI, an "adequate" emergency plan for an approximately ten mile emergency planning zone around a nuclear reactor was an "essential" safety requirement.

From the very time that the new regulation was adopted, it was recognized that the Seabrook plant, of all sites in the United States, might present the most intractable problems for development of an "adequate" emergency plan. After all, Seabrook was only 40 miles from Boston. This was no problem since the EPZ extended only to ten miles (on the theory that the radiation would obey a halt order at that distance). However, Seabrook is less than two miles from often-packed seaside beaches at Hampton and Seabrook, New Hampshire, and within three miles of Salisbury Beach. All these beaches are in essence islands, lacking decent roads to permit timely escape from a radioactive plume.

Although the NRC was asked to deal with the Seabrook evacuation problem immediately, it refused to do so, although its lawyers solemnly promised a reviewing federal court that if emergency planning was indeed "infeasible" at Seabrook, no operating license would be issued.

Accordingly, construction proceeded and in October, 1986, fuel was loaded into the reactor. However, in the spring of that year the Soviet reactor at Chernobyl exploded, contaminating large areas of Europe. This caused Governor Dukakis to conclude that evacuation around Seabrook was indeed "infeasible." He announced the Commonwealth would therefore not submit an evacuation plan.

Seabrook utilities, led by Public Service Company of New Hampshire, responded by petitioning for a rule waiver to shrink the Seabrook EPZ from ten miles to one mile, or by 99 percent. This was interesting, because the Commonwealth's border, at its closest point, was just over two miles away. A one-mile zone, however, would eliminate not only the Commonwealth, and its lack of any emergency plans, but also all the barrier beaches at Hampton and Seabrook. In other words, even Public Service acknowledged, by filing its petition, that preparing an "adequate" emergency plan for the Seabrook area beaches just might not be feasible.

That Public Service was right to be worried was established, ironically, by one of its own expert witnesses. He testified that it would take six or more hours, merely to get all the cars from one side of Hampton Beach, the State parking lot, to the other, at which point the evacuees would be nearly as close to the reactor as when they started, and still have it in full view.

The one-mile proposal met a political fire storm. Not even the plant's staunchest supporter, then Governor Sununu, could endorse it, and the entire New Hampshire congressional delegation opposed it. The NRC, faced with this opposition, backed down. The petition was denied.

Now the NRC had to face the dilemma its procrastination had caused: it had refused to deal with the issue of evacuation feasibility, thus permitting the completion of Seabrook, but it had no way of licensing the plant if its requirement for an "adequate" evacuation plan was to have any meaning whatsoever.

The NRC therefore, belatedly, swung into action. However, it did not take the indicated action of denying the license, or insisting the problem be otherwise corrected. Instead, caving into industry pressure, and perhaps to political pressure, it commenced the systematic but disingenuous destruction of its own requirement for an adequate emergency plan for licensing.

First, it promulgated a rule change to facilitate consideration and approval of a utility emergency plan for the roughly one-third of the zone in Massachusetts. It overcame objections about the lack of legal authority of utility employees to carry out an evacuation, and simply assumed that the

Commonwealth's public officials would actually implement the utility's plan.

Second, it eliminated the requirement for a public siren system to alert the public of an accident, during low power testing. This permitted the low power testing to commence, in June, 1989, beginning the process of contamination of the reactor, although no approved public notification system was in place in the six Massachusetts communities.

Third, and most despicable, it decided to rewrite its own history and declare the emergency planning requirement, which it originally described as an "essential" safety feature, as only a "second-tier" requirement. By this, the NRC presumably means that emergency planning can be deficient, or less than "adequate," but a license can still be issued.

Thus, faced with the intractable fact that the Seabrook area cannot be evacuated in a timely manner, (the NRC's own guidance states accidents can occur in which radiation will be released off site in as little as an hour), and faced with its own requirement that the evacuation plan be "adequate," the NRC simply plays Humpty Dumpty and states that its words mean only what it means them to mean, nothing more and nothing less. By this semantic legerdemain, the NRC proposes to license Seabrook, notwithstanding the facts and the law.

Perhaps one should ask why the NRC, a federal agency which has claimed that safety is its first, last and a permanent consideration, would sink to this level of dishonesty and chicanery. The answer is that the NRC is far more interested in licensing nuclear plants than in enforcing safety regulations that would prevent their licensing. The NRC has never refused to license a nuclear plant.

After all, many NRC staffers come from the industry, and many hope to go to the industry they now regulate. Indeed, at Seabrook, a key emergency planner for Public Service came to the utility directly from the NRC Staff, having previously reviewed the plans he is now charged with maintaining.

One also has to wonder about the role of Governor John Sununu. Previously, responsible officials at Federal Emergency Management Agency, which has the duty of reviewing radiological emergency plans, had declared that the New Hampshire Radiological Emergency Plans were fundamentally inadequate, because the beaches could not be cleared in a timely fashion. The FEMA official who advanced, and was prepared to defend this position, has been removed from his responsibility, and his superior at this time is none other than the very man that Governor Sununu appointed as head of New Hampshire Civil Defense, and who certified that the plan that FEMA subsequently found inadequate was indeed somehow "adequate" when he submitted it.

A government agency that operates at this level of deception is not an agency that we can have confidence will actually be our protector against the nuclear hazards represented by Seabrook and other reactors. Hold your dear ones close if the NRC comes to you and says, "we're from the Federal Government and we're here to protect you against the hazards of nuclear radiation."

November 13, 1989 Robert A. Backus

Senator **Bingaman**. We will be glad to include that entire statement and the same with the other witnesses who are called today. We will use a 5-minute rule so that all Senators can ask questions.

Let me start and ask Mr. Pollard a question or two. I know that you are here as a representative of the Union of Concerned Scientists, but you have also had extensive experience yourself with Mr. Stello at the Nuclear Regulatory Commission. I gather that in a different interview, first of all in a meeting that you had with the staff of the committee here, you stated, I believe, that you resigned from the NRC because Mr. Stello had wanted you to provide false testimony on the safety of a nuclear reactor operation.

In a different interview with the Union of Concerned Scientists you state only the following, and I think this is an exact quote, "I left the NRC because I became convinced that the agency was systematically avoiding its responsibility to protect the public. When there was a conflict between protecting the public and avoiding imposing a cost on the nuclear industry, too frequently the agency opted to protect the industry rather than the public." What is the reason for your resignation as it relates to Mr. Stello? If you could clarify that for us, I would appreciate it.

Mr. **Pollard**. There will be a third version of a different choice of words by me in the hearings of the now-defunct Joint Committee on Atomic Energy way back in February 1976. I do not think there is anything inconsistent in any of my statements, but let me answer your question this way.

I came to the agency from the Navy. I was aghast when I saw the conditions in the commercial nuclear industry compared to what I saw in the Navy. I did not work under Mr. Stello for the entire 6 years I was at the agency. I resigned from that agency primarily as a matter of conscience. I did not want to be part of a Federal agency that was so effective in evading its sole responsibility, which is to protect the health and safety of the public. I gained that conclusion over the entire 6 years plus that I was there, and it was only part of that time that I was under Mr. Stello's supervision, which is exactly what I said in my testimony today.

I hope your staff has either a transcript or a tape recording of what I allegedly said, but I did not say that Mr. Stello ever tried to get me to submit false testimony. What I know to be the case is that Mr. Stello personally tried to get me to change my testimony, my safety evaluation which I was assigned to write of the standardized design of General Electric's boiling water reactors, which I was in charge of.

Senator **Bingaman**. Change it in what respect?

Mr. **Pollard**. Change it to delete my conclusions that number one, the technical information in the application was insufficient to demonstrate, as the agency had as its policy, that we would resolve all outstanding technical issues before we issued an approval of a standardized design.

It was in this episode, and I still may have in my files a letter written to me by my immediate supervisor, which at that time was called section leader, or something like that, I had submitted a draft to Mr. Faust Rosa. He wrote me back a note saying, "Bob, keep telling it like it is, but I do not think it will ever be published."

It was not published, because Mr. Stello did not like my conclusions. He offered no basis or facts which I could consider to change my testimony, nor did he point out any factual basis of why the reasons I reached the conclusions I did were incorrect. He simply insisted that I change it. I am sorry, but I refused.

Senator BINGAMAN. What was the final result? Your report and your conclusion were not published?

Mr. POLLARD. Eventually, of course, they whittled me down on some of the specific language. I was in what I have in the past referred to as an inquisition. It was not Mr. Stello. Mr. Stello assembled a large group of people to what I would call attack me with no technical basis, but since I held my ground they eventually had to issue a supplement to that safety evaluation report which they had published first.

The rest of my colleagues on the staff knew about the details of this dispute between myself and Mr. Stello. It was thought of as somewhat of a joke because at the annual Christmas party at the NRC my present was an autographed copy of this supplement from all of my colleagues with various notations such as one which I remember, "I don't believe it." I still have that as a souvenir of what happens to an NRC employee trying to do this job which Congress told us we were set up to do in the most consistent and thorough technical manner that I knew how.

I never took any pride in whether I approved an application for a license or denied one. I only took pride in whether I did a thorough engineering analysis based on the facts, and I can tell you, Senator, working under Mr. Stello you cannot do that if it delays the issuance of a license.

Senator BINGAMAN. Thank you very much. My time has expired. Under the early bird rule, Senator Lott is the next Senator to ask questions.

Senator LOTT. Thank you, Mr. Chairman. Mr. Pollard, several items in your testimony, specifically on pages 3 and 14, you maintain that safety should take precedence over production, and you say in effect that Mr. Stello would not allow this; but Mr. Stello says that he would insist on both safety and nuclear weapons production. Can we not have them both?

Mr. POLLARD. Senator, I cannot answer your question with respect to weapons because I do not know any more about that than Mr. Stello does. I can answer your question with respect to commercial nuclear plants. Mr. Stello is quite correct, and I experienced it when I worked with him in the agency. Nuclear power is quite a controversial subject, and it is a technically complex subject. Engineering judgments have to be made that balance the benefits and the costs, that balance safety against production.

These disputes on a professional level are not, as perhaps was characterized yesterday, a dispute between people in favor or opposed to nuclear power. They are more a dispute as to how much safety we should have versus in order to get the benefits of running the nuclear plants and how much should that cost. There are also judgments involved of who gets the benefits and who gets the risks.

Now since I served in both the AEC and the NRC, I am quite familiar as to why Congress abolished the Atomic Energy Commission and created the Nuclear Regulatory Commission. It was because the Atomic Energy Commission was charged with both the promotion and regulation of nuclear power. Over the years, promotion clearly gained the upper hand within the Atomic Energy Commission.

But when Congress created the Nuclear Regulatory Commission, they set out the basis for the agency fundamentally that we should get out of the promotion business, that we were there solely to assure the health and safety of the public. The NRC adopted regulations which constitute the definition of what is an adequate level of safety to permit operation of the plant.

So the bottom line in my dispute with Mr. Stello is that I tried to uphold the regulations, and Mr. Stello's conduct in my view can be characterized as upholding the regulations if it did not interfere with the nuclear industry's progress. But if upholding the regulations would delay a plant, would substantially increase the cost of a plant, would require shutdown of plants previously licensed, then we had to find a way to weaken the regulations.

Senator **Lott**. Well, since we have a limited 5 minutes here, I have a couple of reactions. Over the years I have had to deal with the Nuclear Regulatory Commission and its predecessor, and I have to say that my experiences with them have been that they have always tended to delay things or drag them out and not worry about cost and tend to be bureaucratic and overindulge in regulations and harassment.

Listening to the testimony yesterday, I wondered. You and those in opposition, you talk about inquisition. I feel like some of the things that have been levied against this man would take us toward an inquisition. Is it an objection to his professional conduct, or is it that you do not like him because he is aggressive and because you do not approve of the tactics that he uses? If you do not like him as a character, I am not sure that is disqualifying. If you have some real professional basis for it, maybe that is different.

Mr. **Pollard**. I am surprised, Senator, that you even ask such a question. I have known Mr. Stello a long time. I have no reason to expect—in fact, I am absolutely certain that there is nothing in Mr. Stello's personal conduct or in his conduct as a loving husband and father that is at all detrimental. I focused in my testimony and in my resignation on the conduct of this agency, including people like Mr. Stello who, while they will claim that all their actions were for the protection of public health and safety, the facts show otherwise.

Senator **Lott**. Mr. Fersht, what is your organization's position with regard to the U.S. strategy of nuclear deterrence?

Mr. **Fersht**. We believe that nuclear weapons at the end of the cold war are going to be a thing of the past with the appropriate arms control agreements and the appropriate rapprochement between East, West, North, and South. So, therefore, we think that in light of that there needs to be a critical reassessment of the needs for continued production of nuclear weapons. However, that has nothing to do with the nomination before this committee. As I said, there is room for disagreement over strategic weapons policy and, in fact, Mr. Stello's position with respect to arms control or disarmament as the case may be has no bearing on that.

What we are looking to is the need for this agency, the Department of Energy, to reestablish credibility with the American public. We think that Mr. Stello sends the wrong message irrespective of his professional qualifications which Mr. Pollard has more effectively addressed than I could ever do. We would question whether the signals being sent by this committee and by the Senate if it chooses to confirm Mr. Stello are the appropriate ones.

Senator LOTT. Thank you, Mr. Chairman.

Senator BINGAMAN. Thank you. Senator Wirth.

Senator WIRTH. Thank you very much, Mr. Chairman. First, a procedural effort, if I might. You mentioned in your opening comments about witnesses being called. Has the committee asked——

Senator BINGAMAN. Senator Wirth, might I interrupt? I have just been informed that Congressman Kostmayer is here now and has another vote in about 10 minutes. I thought maybe we would just interrupt the questioning and allow him to give his testimony and then come back to you and have you ask your questions of this panel.

Senator WIRTH. Of course, Mr. Chairman.

Senator BINGAMAN. I ask that the panel allow Congressman Kostmayer to come up and give his testimony and then we will recall the panel right after that.

STATEMENT OF HON. PETER H. KOSTMAYER, A U.S. REPRESENTATIVE FROM THE STATE OF PENNSYLVANIA

Mr. KOSTMAYER. Thank you, Mr. Chairman, very much. I appreciate your courtesy, and I apologize for the intrusion.

Senator BINGAMAN. We are pleased to have you here. Go right ahead.

Mr. KOSTMAYER. Mr. Chairman, there is a set of confusing and chaotic circumstances surrounding the matter which my subcommittee investigated a couple of months ago involving Mr. Stello, and I would like to take about 5 minutes to go through it, if I can.

On September 1, 1988, Mr. Stello, as you know by now, authorized a $6,000 cash payment to a man named Douglas Ellison. Mr. Ellison was an informant, and he promised Mr. Stello and others at the NRC that he would provide them with some tape recordings and lots of other information which had to do with some allegations made against some NRC employees, a great number of them including Mr. Roger Fortuna, and also allegations regarding safety, health, and drug use at the plant up in New York State, Niagara Mohawk.

Incidentally, Mr. Ellison had tried without success to sell these very same tapes to a number of national television stations and newspapers and some individuals. Nobody had agreed to buy them except Mr. Stello and he did so.

The tapes and the other information really dealt with two areas, as I said. First, they dealt with allegations against Roger Fortuna, who was an NRC employee himself and was at that time the Deputy Director of the Office of Investigations at the NRC. They also dealt, as I said, with these allegations against the utility in New York regarding drug use, safety, and health violations.

Now Mr. Stello says, and told my subcommittee, that he authorized the payment of $6,000 because it was crucial to get this information about this plant because the plant was about to open. The payment was made on September 1, and he said it was absolutely essential that he get all of the information before the plant was going to open because the opening of the plant was imminent.

Well, just to go through this and take a minute if I can, Status Report number one on Niagara Mohawk which was dated August 5, 1988, part of a running status report which was kept, indicated that the plant was not about to open. That was August 5, 1988. Keep in mind the payment was made on September 1, 1988.

Second, "Nucleonics Week," apparently a trade publication, said in its August 25, 1988, edition, again just a few days before the September 1 payment was made, which payment was made because Mr. Stello said the plant opening was imminent and he had to get the information, they said the plant opening was anything but imminent.

"Inside NRC," a trade publication, the July 18, 1988, edition said that Niagara Mohawk has now been moved to the top of the problem list; startup has been delayed. That is, again, July 18; the payment was made on September 1; Mr. Stello is saying I have to make the payment because the plant is about to start up.

The day before he authorized the payment, which he had to make because the plant was about to start up, the "NRC Daily Staff Notes," an internal publication within the NRC, said, and I quote, "restart date unknown." This is the day before he made a $6,000 payment to get information about a plant which he said was about to open. These notes I assume he had access to.

I mentioned Status Report number one. Now we have Status Report number two on the plant. Again, August 31, 1988, the day before the September 1 payment was made, and I quote from that Status Report number two, an official NRC document, "no schedule for submittal of restart action planned or even plant restart." Now that was an NRC document, Mr. Chairman, that he had access to on August 31. The next day he authorized a $6,000 cash payment. When asked why, he said, "I had to do it because plant startup was imminent."

The plant startup was not imminent. As I sit here today, that plant has still not opened. But he still authorized the payment on September 1. There was really, I think, no reason to take that extraordinary step. The NRC had never authorized this kind of a cash payment to an informant ever in its history. It was really quite an extraordinary step. He went ahead and made that payment on 1 September.

Now we are at September 1, 1988. Mr. Stello has these allegations that he is so desperate to get hold of because the plant is about to be opened up. The allegations dealt with Mr. Fortuna and with all these other safety and health and drug allegations. He did nothing with the allegations for 8 months. He sat on them for 8 months. For a guy who had been so hot to get hold of these allegations and information, for a guy who was willing to make a $6,000 cash payment because the plant was about to be opened up, he did nothing for 8 months. It makes no sense.

Why did he insist on making this cash payment to get this information when the plant was not even going to open up and has still not opened up? Mr. Stello told my subcommittee that one of the problems he faced, one of the reasons he did not investigate the safety allegations, was that if he did, the investigation of these safety allegations which he now had in his hands would alert Mr. Fortuna, also a subject of the investigation, and he did not want to do anything to alert Mr. Fortuna. That is 2 days after September 1.

Well, on November 4, some weeks later, the NRC investigators interviewed Mr. Fortuna. Any cover was blown. The investigation was no longer secret. Still, as of November 4, 1988, Mr. Stello had not investigated those allegations and would not for another 6 months.

The drug charges and the safety and health charges, very briefly, Mr. Chairman, were pretty serious. When we asked why they had not been investigated, Mr. Stello said that the drug allegations were about unit one. There are two units at Niagara Mohawk. The drug allegations were regarding unit one. Unit one was not operating at the time.

I asked him if it was not just as bad if you have people using drugs at a unit which is being prepared for startup as a unit which is actually operating? He acknowledged that, yes, that would be very serious. These are people who were doing very, very important work.

He also acknowledged, and I called the utility the day before and asked whether or not there were work crews going back and forth between unit one, which was not operating, and unit two, which was, and they said absolutely. That is the reason that we put two units together, to save money. We have the same work crews servicing both units. So if you had drug allegations in unit one, you had the same people working on unit two, which was in fact operating.

I know it is a complex and convoluted series of events. I have tried my best to make it clear. The reason I am here, Mr. Chairman, is because I read in the New York Times yesterday that Mr. Stello said that none of the investigations had come up with anything worthwhile. I think that is not the case at all.

Finally, let me say that I have actually never met Mr. Stello except for the day that he appeared before my subcommittee, and I do not take any pleasure in coming here to testify personally against Mr. Stello. I have no personal dispute with him, but I think this is a terribly important responsibility that you are considering, and I think that these are most serious and fundamental questions which have not been resolved and need to be resolved. Thank you, Mr. Chairman.

Senator BINGAMAN. Thank you very much. Are there questions from the committee? Yes, Senator McCain.

Senator McCAIN. Mr. Kostmayer, is this a report that comes from your subcommittee or personal observations?

Mr. KOSTMAYER. This is a subcommittee report.

Senator McCAIN. Is the minority in agreement with the report?

Mr. KOSTMAYER. The report has not been filed, Senator.

Senator McCAIN. I am told the minority is not in agreement with your conclusions.

Mr. **Kostmayer**. The ranking member is Ms. Vucanovich of Nevada. She was not present during Mr. Stello's testimony, but if the minority says that is their position, I am sure it is.

Senator **McCain**. You have no information either way?

Mr. **Kostmayer**. What puzzles me, and I cannot really figure this out myself, is why he was so enthusiastic about making this payment of $6,000. When we asked him, he said, look, I had to make the payment because the plant was about to open. The payment was made on September 1. The information was obtained——

Senator **McCain**. I am sorry. Maybe you did not understand my question. My question was do you know whether the minority on your subcommittee is in agreement with your position?

Mr. **Kostmayer**. No, I do not know. If you say they are not, I assume you are right.

Senator **McCain**. Can we expect a subcommittee report on this issue?

Mr. **Kostmayer**. I think shortly, yes. The subcommittee is in the process of preparing a report. The final draft has been prepared, and it should be published very shortly.

[The report referred to follows:]

THE FORTUNA AFFAIR - Actions of NRC Officials in their Investigation of Roger Fortuna Show Questionable Intent and Improper Conduct

April 4, 1990

ACTIONS OF SENIOR NUCLEAR REGULATORY COMMISSION STAFF IN THEIR INVESTIGATION OF ROGER FORTUNA SHOW QUESTIONABLE INTENTIONS AND IMPROPER CONDUCT

I. INTRODUCTION

The Committee on Interior and Insular Affairs is charged, in part, with matters regarding the "regulation of the domestic nuclear energy industry, including regulation of research and development of reactors and nuclear regulatory research and special oversight funtions with respect to nonmilitary nuclear energy."1/ The committee's oversight responsibilities include all programs administered by the Nuclear Regulatory Commission, including the agency's regulation of civilian reactors and the internal operations of the Commission and the NRC staff.2/

For several years, the committee has been concerned with the manner in which the Commission and senior NRC personnel have pursued investigations of licensee wrongdoing.3/ The committee has also been concerned about the conduct of senior NRC officials in their investigations of alleged NRC employee misconduct.4/ On both counts, the committee has found the NRC's performance lacking. On at least one occasion, the subcommittee on General Oversight and Investigations has concluded that senior NRC officials acted repeatedly to block potential criminal actions against licensees.5/ On another occasion, senior committee members have also concluded that a senior official charged with investigating employee wrongdoing at NRC abused her authority and acted to harass NRC staff.6/

Beginning in February 1989, committee members expressed concern about the NRC's investigation of Mr. Roger Fortuna.7/ Mr. Fortuna, Deputy Director of the NRC's office in charge of investigating licensee wrongdoing, was at that time being threatened with termination because of his "failure to cooperate" with an agency investigation of alleged "improper activities" by Fortuna in his dealings with potential informants outside the agency.8/

With the surfacing of additional facts indicating the possibility of wrongdoing by high agency officials, the Subcommittee on Oversight and Investigations on May 23, 1989, formally launched an investigation into the particulars of the Fortuna affair. The investigation focused on five specific aspects of the matter: the guilt or innocence of Fortuna; the manner in which the Fortuna investigation was initially pursued within the NRC; the actions of senior NRC officials in influencing the course of the investigation and whether or not in doing so they had failed to address important safety issues; the nature and propriety of the still ongoing Fortuna investigation; and the actions of the commission itself in this matter.

Following a hearing on the issue held October 12, 1989, the subcommittee enlarged the scope of its investigation to include whether NRC officials had made false statements in sworn testimony to this subcommittee and other committees of the Congress.

On the basis of this investigation, the subcommittee has reached several conclusions:

First, there exists no compelling evidence of wrongdoing against Mr. Fortuna. Moreover, the NRC's investigation, now in its second year, should long since have been concluded to reflect this fact. The fact that the investigation has been pursued over such an extended period without supporting evidence suggests that senior NRC officials abused their authority in order to indulge personal and professional antagonisms toward Mr. Fortuna;

Second, NRC officials in the agency's Office of Inspector and Auditor disregarded accepted investigative and evidence-gathering practice in the Fortuna matter, instead choosing to sign an unprecedented and highly inadvisable cash contract with an alleger. Moreover, NRC officials either ignored or purposely diregarded guidelines set out by the NRC's Office of the General Counsel in preparing a justification for the contract and failed to provide accurate and complete information to the OGC on the facts of the case. Additionally, once the investigation had begun, OIA officials were sloppy and unprofessional in the pursuit of evidence in the case and failed to follow procedures as prescribed in their own handbook despite previous criticism of their investigative practices;

Third, senior NRC staff officials improperly participated in the course of an internal agency investigation, meanwhile ignoring potentially significant health and safety issues and allegations of licensee wrongdoing legitimately within their purview;

Fourth, the decision by Judge Alan Rosenthal to enlarge the scope of the initial Fortuna investigation prolonged this matter unnecessarily. Moreover, the subcommittee believes that the NRC's payment arrangement with Judge Rosenthal created the appearance of bias;

Fifth, the commissioners failed to assure that charges of wrongdoing by its highest level officials were investigated in a timely manner. The Commission has, because of its treatment of Mr. Fortuna while he has been under investigation, left itself open to charges of outright discrimination; and

Finally, after review of the hearing record and other sworn testimony, the subcommittee believes that Mr. Victor Stello, in formulating a justification for his actions in this matter, has misstated the facts to this subcommittee and other committees of the Congress.

II. SUBCOMMITTEE INVESTIGATION

In the course of its inquiry, the subcommittee collected extensive documentary evidence from the NRC and conducted numerous interviews of NRC personnel and of others from outside the Commission.

On October 12, 1989, the subcommittee held a hearing at which the following witnesses appeared:

Mr. Roger Fortuna, Deputy Director of the Office of Investigations, NRC

Ms. Sharon Connelly, former Director, Office of Inspector and Auditor, NRC

Mr. Victor Stello, Appointee Assistant Secretary of Defense Programs, Department of Energy; Executive Director for Operations, NRC

Mr. William Parler, General Counsel, NRC

Mr. Ben Hayes, Director, Office of Investigations, NRC

Ms. Maureen Gawler, former consultant, Office of Inspector and Auditor

Mr. Martin Malsch, Acting Inspector General, NRC

Judge Alan Rosenthal, former Chairman of the Atomic Safety and Licensing Appeal Panel, NRC

Based on the investigation, hearing and subsequent analysis, the subcommittee has identified six issues worthy of specific attention:

1.) The actions of Roger Fortuna before and after the Office of Inspector and Auditor began its investigation.

2.) The actions of OIA officials, and specifically former Director Connelly, in carrying out the investigation of Mr. Fortuna.

3.) The actions of high-level NRC staff including Executive Director for Operations Stello in relation to the Fortuna investigation.

4.)The propriety of the investigation carried out by Judge Rosenthal subsequent to February, 1989.

5.) The actions of the commission in its oversight of the Fortuna investigation.

6.) The veracity of statements made by Mr. Stello to this subcommittee and other committees of Congress.

ENDNOTES

1./ Rules for the Committee on Interior and Insular Affairs, U.S. House of Representatives, 101st Congress, at 19.

2./ Id.

3./ Investigative Report titled, NRC COZINESS WITH INDUSTRY, Subcommittee on General Oversight and Investigations, December 1987, at 13

4./ Letter from the Honorable Morris K. Udall and the Honorable Sam Gejdenson to NRC Chairman Lando W. Zech, Jr. (September 30, 1986).

5./ COZINESS Rept., at 13

6./ Letter from Udall and Gejdenson to Zech, Sept. 30, 1986

7./ Transcript of NRC Fiscal Year 1990 Budget hearing before the Subcommittee on Energy and the Environment (February 17, 1989).

8./ Memorandum from H.L. Thompson to R.A. Fortuna (February 9,1989).

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BACKGROUND AND SUMMARY

In February 1989, the NRC initiated an administrative action against Roger Fortuna, the Deputy Director of the NRC Office of Investigations. Fortuna was charged with failure to cooperate with an agency investigation of allegations that he had engaged in improper activities. These included a series of ill-defined charges to the effect that he had provided confidential information to persons not authorized to receive it, that he had withheld safety significant information from NRC safety officials, and that he had conspired with an anti-Seabrook activist to discredit the NRC.

On February 22, Mr. Fortuna was placed on administrative leave with pay; on April 3, 1989 he was assigned to a mundane administrative position. This job assignment was made pending resolution of the charges against him, a resolution originally anticipated within sixty days. No such resolution was achieved within sixty days and, 10 months later, with the charges against him still under investigation (and with no information available to the NRC that had not been available upon initiation of the inquiry in August 1988) Fortuna was reinstated on February 20, 1990 to the position of OI Deputy Director.

The allegations against Fortuna were made in mid-1988 by Douglas Ellison, a technician who previously had been employed at the Nine Mile Point nuclear plant owned by Niagara Mohawk, a New York State utility. Ellison's allegations derived from his contention that serious safety problems existed at Nine Mile Point and that such problems were being ignored and/or made light of by Niagara Mohawk and the NRC. In addition to alleging wrongdoing by Fortuna, Ellison charged numerous NRC and utility officials with mis- and malfeasance.

The information available to us indicates that even a cursory consideration of the charges against Fortuna would have shown them not credible. Certain of Ellison's 1988 allegations about safety problems at Nine Mile Point, however, were substantiated following an inquiry initiated only after facts embarrassing to the NRC became public.

Notwithstanding the flimsiness of Ellison's August 1988 allegations against Fortuna, the NRC's then de facto Inspector General [the Director of the Office of Inspector and Auditor (OIA)] had assigned the highest priority to the conduct of an inquiry which has continued sporadically for some 18 months and found nothing of substance. Meanwhile Ellison's charges against other NRC and utility officials, certain of which appeared considerably more plausible than the charges against Fortuna, have not been investigated at all.

It is particularly noteworthy that in the course of gathering information, which he said supported his contentions, Ellison recorded conversations with NRC and utility officials without their consent. Some such recordings may have violated State and, possibly, Federal laws. As part of its Fortuna investigation, NRC acquired Ellison's tapes under a $6000 secret contract. Ellison was paid in cash.

Instituted with an illicit motivation and a false justification, and conducted without adherence to the NRC's own procedures, the contracting arrangement with Ellison, motivated by institutional and personal hostility, was improper and perhaps illegal. Moreover, improprieties and illegalities aside, the contract was ill-advised. Among other things, the NRC paid for information that could have been obtained through a subpoena and in failing to go the subpoena route, the NRC may well have encouraged nuclear workers to withhold safety information with the hope that ultimately the Commission would pay for it. In addition and of considerable significance is that the contract made it appear that the NRC condoned taping of conversations in situations where some parties to the conversation were not aware their words were being recorded.

The evidence indicates that the former OIA Director acted improperly, that high level NRC staff aided and abetted the former Director's improprieties, and that the Commission, at a minimum, allowed its staff to run amuck. Through its uncritical support and possible encouragement of the former OIA Director, the Commission permitted an unwarranted personnel termination proceeding to be initiated against a senior manager who, according to Chairman Dingell, "... by virtue of doing his job, had become an annoyance to the agency."

While Fortuna was left languishing in a backwater temporary position, no NRC official who committed improprieties in this affair has yet been called to account for her or his actions. Indeed, if any such calling to account occurs in the future, it will have resulted from forces outside the NRC that pushed a reluctant Commission to confront the wrongdoing that occurred within its ranks.

The events flowing from the Ellison allegations portray an agency gone astray, driven by the imperatives of the industry it is supposed to regulate, rewarding those who follow its contorted course and penalizing harshly those who do not.

At bottom, the Fortuna story is an account of implausible allegations triggering a series of bizarre acts that has besmirched the NRC. As to how this could have happened, the best explanation is that the judgement of some of the agency's most senior officials was clouded by hostility to Fortuna and a perceived opportunity to rid the agency of him. It thus appears that Fortuna became a victim of (1) his vigorous advocacy of a strong response against those who commit criminal violations of the Atomic Energy Act, (2) the longstanding fact of NRC regulatory staff enmity toward investigators of potentially criminal violations of the Atomic Energy Act and (3) a personal vendetta conducted by the former Director of the NRC Office of Inspector and Auditor (OIA).

The remainder of this report presents detailed findings and conclusions, a description of the principal parties to the matter, descriptions of the Office of Investigations (OI) and Office of Inspector & Auditor (OIA), a discussion of the allegations against Mr. Fortuna, and a chronology of events.

OBSERVATIONS, FINDINGS AND CONCLUSIONS

The Subcommittee's inquiry leads to the following specific findings, conclusions and observations, certain of which are alike those presented in reports issued by the House Energy and Commerce Committee Subcommittee on Energy and Power and the Senate Committee on Governmental Affairs:

- The Executive Director for Operations (EDO) and Director of the Office of Inspector & Auditor (OIA) responded with unprecedented actions, unwarranted by the evidence, in reacting to implausible allegations against Roger Fortuna whose forceful advocacy of vigorous investigation of criminal violations of NRC regulations had antagonized NRC management.

- OIA officials, with the support of the EDO and other ranking NRC staff, continued their pursuit of Mr. Fortuna after the allegations against him were found lacking in merit. Instead of dropping their investigation once it became clear that the allegations would not be substantiated, the OIA Director and her subordinates apparently sought to entrap Mr. Fortuna into making sworn statements that might seem to conflict with statements he had made in two-year-old conversations that had been recorded without his knowledge or consent.

- The EDO and/or OIA never investigated (or caused to be investigated) Ellison's allegations of mis- and mal-feasance by utility management and NRC officials other than Fortuna. The EDO failed to assure timely investigations of Ellison's safety and drug allegations; rather, the EDO did not take steps to deal with these matters until March 1989, after the Fortuna matter had surfaced, when questions would be expected as to why, if safety were the motivating factor for the Ellison contract, the safety issues had yet to be referred to the appropriate parties for investigation.

- Documents pertaining to the Ellison contract were destroyed. While it may be that destruction of these documents was not material to the matter, the Acting NRC/IG appears to have undertaken no substantial action (including the taking of sworn statements) to determine which documents were destroyed, the purpose of such destruction, and the directives and/or discussions (if any) leading to such destruction.

- It appears that NRC staff have made false statements in justification of certain actions:

In his April 14, 1989 letter to Senator Glenn and in his October 12, 1989 testimony, Mr. Stello, the EDO, made statements to justify his authorization of the contract with Mr. Ellison that are inconsistent and not supported by the facts. In particular, Mr. Stello's statements that Nine Mile Point Unit 1 was scheduled for restart in the fall of 1988 are not supported by documents. We believe that no documents exist to indicate, as suggested by Mr. Stello, that during September 1988, the projected restart date slipped from the fall of 1988 to some later date. Mr. Stello's statements, that it was important to obtain Ellison's information even if restart were not projected for 1988, is inconsistent with his failure to cause an inquiry into Ellison's safety and drug allegations until March 1989.

Ms. Sharon Connelly, the former Director of OIA, appears to have made false statements by omission in withholding material information concerning the Ellison contract in her briefings of the NRC General Counsel in August and September 1988. In addition, Ms. Connelly, may have testified falsely on these briefings at the Subcommittee's October 12, 1989 hearing.

Ms. Connelly is not credible in explaining why she contracted with Mr. Ellison in order to obtain his tapes rather than seeking to obtain them through a subpoena.

Mr. Fred Herr, the Deputy Inspector General, and Mr. Mark Resner, the Assistant Inspector General for Investigations, as stated in the report prepared by the Energy and Power Subcommittee staff, made sworn statements in affidavits that "appear to be knowingly false in several respects."

While many of the foregoing apparent false statements were made prior to establishment of the NRC Office of Inspector General in mid-April 1989, the acting NRC Inspector General failed to investigate them in a vigorous manner. There in fact exists a remarkable contrast between the NRC's apathetic response to the substantial evidence of wrongdoing by these officials and the agency's frenzied reaction to the implausible allegations against Mr. Fortuna.

Not only has there been only insubstantial investigation of the apparent wrongdoing by NRC officials in their handling of matters arising from the Ellison allegations, but the contrast between the agency's treatment of Mr. Fortuna and that accorded Mr. Stello, Ms. Connelly, Mr. Herr and Mr. Resner is startling. Mr. Fortuna was exiled to the agency's bureaucratic hinterlands while Mr. Stello was nominated as manager of the nation's nuclear weapons development and production complex; Messrs Stello, Herr and Resner have been given cash awards; Messrs Herr and Resner, notwithstanding their own questionable ethical behavior retained positions as principal officials in the office of the keeper of the agency's ethics; and Ms. Connelly was assigned a new position created for her with the Commission's blessing. We have, in fact, heard not one rebuke emerge from the NRC to indicate in any way that the Commission has been displeased with the manner in which its highest level officials have dealt with this affair. [This is the situation that existed as of the time the permanent Inspector General assumed the position on November 22, 1989; we have been informed that he has initiated investigations of the actions of Ms. Connelly and her deputies in the Fortuna affair.]

- For more than 15 months after acquiring Ellison's tapes, NRC officials, who had responsibilities for dealing with Ellison's allegations and related matters (i.e. the OIA Director, the Acting IG, the General Counsel, and Judge Rosenthal), did not conduct an adequate inquiry into the question of whether such tapes had been recorded in a manner that violated Federal or State laws, and if so, what might be the ethical implicatons and regulatory consequences of having purchased such tapes.

- Even under the assumption that the Ellison tapes were recorded in a manner that did not violate Federal or State laws, the NRC has undertaken no assessment of the propriety and/or wisdom of the purchase of tapes containing secret recordings of conversations in which NRC and utility officials were engaged.

- The OIA investigation did not follow appropriate investigative procedures in general nor OIA procedures in particular in conducting the inquiry stemming from Mr. Ellison's allegations. The manner in which OIA conducted this investigation, in itself, calls into question the competence of OIA's three top officials. Specifically, the integrity of the principle evidence was not validated, no investigation plan was prepared, Mr. Fortuna was not informed that he was the subject of an investigation, proper interview reports were not prepared, and OIA made no effort to interview Mr. Comley with regard to his alleged conspiracy with Mr. Fortuna "to topple" the NRC. The investigation of Mr. Fortuna was pursued in fits and starts; after the initial frenzied activity conducted from late August to mid-September 1988 and the modest efforts of early November, the matter lay fallow until late January 1988 at which time OIA, aided and abetted by the agency chief staff members, went off on a fishing expedition, seeking, among other things, to entrap Mr. Fortuna in contradictions between a current interview and a secretly recorded conversation that had occurred two years in the past.

Taken together, the following indicates that Mr. Fortuna was indeed the subject of a vendetta carried out by the agency's highest level officials:

The failure of the responsible NRC officials to investigate Mr. Ellison's allegations involving Niagara Mohawk managers and NRC officials other than Mr. Fortuna.

The failure of the responsible NRC officials to investigate in a timely manner apparent wrongdoing by NRC officials' handling of matters arising from the Ellison allegations including false statements subsequently put forth to justify their actions.

The treatment accorded Mr. Fortuna as compared with that bestowed upon officials who appeared to engage in wrongdoing in handling the matters arising from the Ellison allegations.

The treatment accorded Mr. Fortuna vis-a-vis other agency officials who over the NRC's lifespan have been the subject of more serious and better founded allegations.

An overriding conclusion relates to evidence indicating that the Commission itself condoned the conduct of Mr. Stello, Ms. Connelly and their principal deputies. This evidence is in part the Commission's failure to assure that apparent wrongdoing by its highest level officials was properly investigated in a timely fashion. Further evidence is the fact of the Commission's failure to assure that the officials who sought "to dispose of RF" were subjected to the same administrative conditions as those imposed upon Mr. Fortuna; i.e. removed from their positions or otherwise not allowed to function in them pending completion of the investigations. Finally, it appears that the Commission engaged Judge Rosenthal, who himself had an interest in protecting the agency from embarrassment and therefore hardly an objective investigator of Mr. Fortuna, to engage in an open-ended freewheeling inquiry, whose apparent objective was to dig up something that could be displayed to justify the massive amount of agency time and energy that had been expended upon the matter.

Granting for the sake of discussion that prior to the surfacing of the Ellison contract, the Commissioners were unaware of the essentials of the matter, their failure to deal properly with the situation indicates that their overriding concern was to minimize damage to the agency's image. If, following the surfacing of the Ellison contract, the Commission was truly seeking full disclosure, it would have done the following:

- determined why only the Fortuna element of Ellison's allegations was acted upon prior to the apparently unexpected surfacing of the Ellison contract while the following were not pursued:

> Ellison's allegations of professional misconduct by an NRC Region I OI official, who is alleged to have mishandled Ellison's case in January 1987.
>
> Ellison's allegations of criminal misconduct by a former Commissioner and his technical assistant, who are alleged to have disclosed Ellison's whistleblower identification on or about January 7, 1987.
>
> Failure of Region I to adequately follow upon on Ellison's earlier allegations, and an NRC coverup of utility wrongdoing; i.e. Ellison said, in effect, the $50,000 fine was not an indication of a strong response to his allegations, but rather an attempt to limit damage, to coverup up truly serious findings with a $50,000 penalty.
>
> Ellison's allegations concerning falsification of monthly operating reports sent to NRC for Nine Mile Point those against NRC and licensee officials.
>
> Ellison's allegation of suppression by Region I officials' of a report relating to Ellison's 1986 allegations.
>
> Ellison's allegation of blackmail by Niagara Mohawk officials to obtain a false statement against him.

- assured a timely and comprehensive investigation of the extensive list of apparent mis- or malfeasance by NRC staff. These include:

> Failure of OIA to conduct an inquiry into Ellison's allegation of NRC staff wrongdoing other than that alleged against Fortuna.
>
> Failure of Ms. Connelly to take steps to assure that an investigation of Ellison's allegations of wrongdoing by Niagara Mohawk officials.
>
> Failure of OIA to conduct even the investigation of Fortuna in accord with procedures specified in the OIA manual.
>
> The failure of Ms. Connelly and Mr. Stello to provide material information concerning the proposed Ellison contract to Mr. Parler.

False statements on affidavits submitted by OIA officials to the United States District Court.

The EDO's failure to refer Ellison's safety allegations to the regulatory staff prior to March 1989.

Efforts by the former Director of the Office of Congressional Affairs to keep documents out of the public domain based on the false assertion that to make such documents public would somehow compromise ongoing investigations.

PRINCIPALS

Connelly, Sharon. Former Director NRC Office of Inspector and Auditor.

Comley, Stephen. Active opponent of Seabrook. Owner of nursing home in the Seabrook emergency planning zone.

Ellison, Douglas. Former employee of Niagara Mohawk who has charged utility and NRC officials with criminal acts involving willful violations of NRC regulations.

Fortuna, Roger. Deputy Director, NRC Office of Investigations (OI)

Greenspun, Julien. Fortuna's attorney. Former Justice Department prosecutor who sought indictments of high level NRC officials.

Herr, Frederick. Former Deputy Director, NRC Office of Inspector and Auditor and current Acting Director.

Malsch, Martin. Acting NRC Inspector General from April 1989 until December 1989.

Resner, Mark. Deputy Director for Investigations, NRC Office of Inspector and Auditor.

Rosenthal, Alan. Retired NRC Licensing Appeals Board Judge who the Commission appointed to investigate allegations against Fortuna and all other OIA investigations involving OI personnel.

Stello, Victor. NRC Executive Director to whom Thompson reports.

Thompson, Hugh. NRC Deputy Executive Director to whom Office of Investigations reports.

OFFICE OF INVESTIGATIONS (OI)

OI is responsible for conducting investigations of potentially criminal violations of the Atomic Energy Act. These violations include willful non-compliance with certain NRC regulations. Criminal sanctions may result from such specific willful, non-complying acts as falsification of records, submittal of false statements to the NRC, and use of bogus materials in nuclear construction.

OI was established in 1982. Prior to this time, investigations of potential criminal violations of the NRC regulations were conducted by ad hoc groups composed of staff from the NRC Office of Inspection and Enforcement and from OIA. Such investigations were rare and generally led to no findings at all, to findings that such things as false statements were knowingly false but not willfully so, and findings that false statements were made neither willfully nor knowingly.

After a series of episodes showed that the NRC's existing ad hoc process for dealing with criminality was not workable, Chairman Udall requested the Commission to establish the Office of Investigations. Since its early days, OI has had an uneasy relationship with other elements of the NRC. OI's unpopularity results in part from findings of flawed management integrity that have the potential to cause revocation of reactor operating licenses, a step which this and previous Commissions have avoided even when they have appeared foolish in doing so.

Another element in OI's unpopularity is that its findings have pointed up failings of NRC regulatory staff who have tended to rationalize and excuse willful violations of the Commission's regulations. In cases of significant wrongdoing by high level licensee officials, the Commission and regulatory staff have sided with utilities in arguing against the validity of OI findings. [See, for example, the December 1987 report of the Subcommitee on General Oversight and Investigations.]

OFFICE OF INSPECTOR & AUDITOR (OIA)

Until it was abolished in 1989, OIA conducted investigations of possible misconduct by NRC employees. Such misconduct ranged from misuse of agency equipment to failures by high level officials to assure that the Commission's regulations are enforced. Each of OIA's three directors has left office under a cloud arising from excessive zeal put forth to help achieve the perceived Commission desire that it not have to deal with wrongdoing at the top.

The first OIA Director left office in 1978 amidst the furor over the Commission's coverup of facts associated with the then Executive Director for Operations' "no evidence" statements concerning alleged diversion of high enriched uranium to Israel.

The second Director was relieved of his post and given an agency-paid sabbatical at the University of Virginia after it became public that he had instructed his staff to take documents home in order to prevent their release pursuant to the Freedom of Information Act. The documents in question indicated that the NRC was aware of the mess at Zimmer at least two years before the Commission, provoked to action by persistent whistleblowers, admitted to serious deficiencies in the plant's design and construction. These problems would have been so costly to correct that Zimmer's owners decided that, although construction of the plant was virtually complete, the least costly option was to convert it into a coal-burning electric station.

The third OIA Director, Sharon Connelly, got into trouble over her suppression of a sexual harassment matter within OIA. A Department of Justice (DOJ) inquiry into the matter found that she made statements to investigators that were not credible. DOJ encouraged the Commission to replace her; the Commission did not do so. Committee Chairman Udall and Subcommittee Chairman Gejdenson then recommended that she be removed; again, the Commission refused. In early March 1989, after revelations of improprieties in her conduct of the Fortuna investigation, she was transferred out of her Director's position to a new NRC position, having ill-defined responsibilities and hurriedly created for her by the Commission soon after her actions in the Fortuna matter became known to the NRC's Congressional oversight committees.

ALLEGATIONS AGAINST FORTUNA

The Fortuna matter is rooted in allegations made against him by Douglas Ellison, who had been employed at Nine Mile Point, a nuclear plant located in upstate New York and owned by Niagara Mohawk. Ellison alleged to OIA that Fortuna had engaged in various improper actions including conspiring to "topple" the NRC, providing sensitive information to persons not entitled to it, not passing on safety-related information to the appropriate NRC persons, compromising the confidentiality of an informant, and seeking to discredit Ellison.

One of the charges derived from the Ellison tapes was that Fortuna had withheld from NRC safety officials information about the so-called Waplov case. Connelly and Stello have cited this case as a possible example of Fortuna concealing safety-related information from NRC officials responsible for dealing with it. The only available information relating to this case appears on the tape of the January 14, 1987 conversation between Comley and Fortuna. The transcript of the January 14 conversation submitted to the Subcommittee by Ms. Connelly contains the following two references to the "Woplav case":

> Comley: ... Look, be absolutely with the Woplav case. Don't mention it to anybody.
>
> Fortuna: I have not said a fucking word, man.

Comley: Okay. Don't -- don't even have it in your possession.

Fortuna: All right, then I'll even get it the hell out of my office tomorrow.

Comley: Okay.

Fortuna: It's not in the office files, you know what I mean, it's in my room.

Comley: Yeah.

Fortuna: I'll take it out of there tomorrow.

Comley: Yeah. Okay.

Fortuna: You know that shit you sent me. I got it at work and I was reading it last --- I'll bring it back.

Comley: Okay.

Fortuna: I haven't said one goddamned word.

Comley: Bring it home and look at it, keep looking at it.

Fortuna. All right. [Tr., p. 133-134.]

.....

Comley: .... But the WOP/ER case --

Fortuna: No, I haven't said, I haven't -- you told me, I did it. [Tr., p. 146.]

Upon investigation subsequent to the Oct. 12 hearing, the subcommittee has determined that the "Woplav" and "WOP/er" case mentioned during the conversations actually is a reference to Mr. Joseph D. Wampler, a one-time employee at the Seabrook nuclear facility. Mr. Wampler was employed by Pullman-Higgins, the chief welding contractor at Seabrook, as a Site Level III radiographer beginning in August 1983. Wampler was terminated by Pullman-Higgins in January 1984.

Following his firing, Wampler contacted both the Department of Labor and the NRC Senior Resident Inspector to complain about his firing and to express concerns with safety at the plant. Among other things, Wampler expressed several concerns to both NRC and DOL officials about the manner in which Pullman-Higgins was dealing with various deficiencies he had pointed out while reviewing x-trays of welds made at the plan. Wampler also expressed concerns at the NRC's Senior Resident Inspector at Seabrook regarding 16 nonconformance reports that he had not been able to finalize before his firing.

When questioned by subcommittee staff, Comley could not remember what documents he had given Fortuna regarding the Wampler case. Fortuna, when questioned by subcommittee staff, said he had no memory of receiving documents relating to the Wampler.

However, Fortuna said that he "would have remembered" if Comley had sent him a copy of Wampler's Department of Labor hearing transcript, and stated that he had "definitely not" seen any such document.

From conversations with subcommittee staff and the contents of documents sent to the subcommittee offices, it is clear that Comely believed the Wampler case directly related to the Padovano matter. Specifically, Comley believed that Wampler had been hired to review the safety of welds that Padovano was supposed to have checked.

After preliminary review of the evidence, the subcommittee believes that Comley was mistaken in this assumption. When Fortuna was informed of the facts of the Wampler case and of Comley's portrayal of the situation, however, Fortuna mentioned that because Padovano had been successfully prosecuted, it "was possible" that he had dismissed Comley's contention as being too closely related to the initial case to warrant further attention.

As of March 22, 1990, the subcommittee was continuing its investigation into the NRC's handling of Wampler's 1984 complaints.

Although Ellison provided the tape containing the foregoing discussion to the NRC in August 1988, Connelly did not seek to question Fortuna about it until January 1989. Connelly, while in charge of the case until late February 1989, never sought to ask Comley about "Woplav" nor did she seek to obtain Comley's tapes. Rosenthal, after assuming responsibility for the inquiry did subpoena Comley's tapes, but he never sought to interview Comley.

Having surfaced through Comley, the "Woplav" case had a high likelihood of relating to Seabrook, which was on the verge of receiving an Operating License from the NRC. Stello, therefore, had cause to obtain all available information about "Woplav" as soon as possible, using whatever means were available to him. Yet Stello did nothing to determine the validity of Ellison's safety allegations beyond the September 1, 1988 act of authorizing the contract with Ellison.

If Stello had thought the matter important, he could have sought to talk to Comley, he could have subpoenaed Comley and/or his tapes, and he could have sought an immediate interview of Fortuna. But Stello did none of these things and, as far as we know, he did not bring the matter to the attention of his staff or others party to the Seabrook proceeding. His failure in this regard indicates either that Stello, as he and others accused Fortuna of doing, had suppressed a potentially significant safety issue.

In any event, it was disingenuous of Connelly and Stello to raise "Woplav" as a serious allegation against Fortuna, warranting purchase of Ellison's tapes, when the scheduling and scope of Connelly's inquiry into the case and Stello's total lack of follow-up suggested that both officials, by virtue of their handling of the so-called "Woplav" case, committed the very act charged against Fortuna.

Overall, even a cursory consideration of Ellison's allegations against Fortuna now shows (and would have shown in August 1988) that they lacked merit.[1] Perhaps as a result of the weakness of the charges, the NRC itself did not move expeditiously to inquire into the allegations against Fortuna. Ms. Connelly learned of the allegations in August, 1988 and by mid-September OIA had gleaned all of Ellison's relevant information. Yet, Fortuna was not interviewed until November 4 (an interview which did not touch on the matter that was most important in bringing about the Ellison contract; i.e. the January 14, 1987 tape and its reference to "Waplov"), Comley was never interviewed, and the demand for a second Fortuna interview did not emerge until late January 1989.

Moreover, NRC has been inconsistent in stating the purpose of OIA's Fortuna investigation:

> On September 12, 1988, in its interview with Ellison, OIA appeared to consider the major allegation against Fortuna to be that he engaged in a criminal conspiracy with an anti-

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[1] In fact, the Ellison allegations against Fortuna were not the cause of Fortuna's suspension and proposed termination. Rather, the Commission was moving to terminate Fortuna for his refusal to appear before OIA. Specifically, the charge against Fortuna was that he refused a management directive to submit to questioning by OIA with regard to an investigation OIA was conducting of the Ellison allegations against him. Fortuna says that his refusal to appear before OIA was not absolute; that it was based on his objection to having to appear before OIA in circumstances where his rights would not be protected. Fortuna says that the directive to appear before OIA was not a lawful order and he was within his rights in refusing to obey it.

In assigning Fortuna to the FOIA Branch, pending outcome of the investigation of the Ellison allegations against him, the NRC, in effect, has admitted Fortuna did nothing improper in refusing to be interviewed by OIA under conditions in which his rights would not be protected.

Seabrook activist, Stephen Comley, to discredit the NRC. OIA formulated this allegation, in an undated draft report:

> According to Ellison, Comley is an "anti-nuke type" who believes no nuclear plant can operate safely because of poor construction. Ellison's belief that Comley, with the assistance of, or under the direction of, Fortuna, is building an organization to topple the Nuclear Regulatory Commission was supported by the tapes of conversations between Comley and Fortuna, Comley and Ellison, and Ellison and Fortuna. The tapes also support Ellison's view that Comley has others working with him in the NRC.

In his February 9, 1989 memorandum to Fortuna, Hugh Thompson (to whom OI reported) stated the OIA investigation involving OI concerned Ellison's allegations that his confidentiality had been breached, that OI tried to discredit him, that he had not been advised of the resolution of his allegations, and that Nine Mile Point 2 had been licensed while his allegations concerning false documents were still under investigation. Of these allegations only the breaching of confidentiality and seeking to discredit Ellison would involve Fortuna. Thompson did not mention in his memorandum the allegation that Fortuna had conspired to discredit the NRC.

In March 6, 1989 affidavits prepared for the United States District Court, Herr and Resner stated that "the OIA investigation concerned the manner in which OI considered and acted upon allegations from Douglas Ellison." Note that the Herr and Resner March 6 formulation of the charges against Fortuna is significantly different from that stated by Thompson on February 9. On February 8, Herr had stated to Fortuna's attorney a formulation of the charges against Fortuna that was similar to that stated in Thompson's February 9 memorandum.

During Fortuna's March 22 appearance before Alan Rosenthal, who the Commission assigned to conduct the investigation of Ellison's allegations against Fortuna, Rosenthal appeared to be focussing on the question of why Fortuna had anything to do with Comley, and why he had not defended the NRC in his conversations with Comley.

Not finding grounds to take actions against Fortuna in the tapes purchased from Ellison (i.e. tapes which OIA had initially believed would contain incriminating information), Mr. Rosenthal expanded his investigation to include review of tapes Comley had allegedly made in the course of conversations with Fortuna.

SEQUENCE OF EVENTS

On December 6, 1986 and January 16, 1987 Ellison sent letters to OIA alleging, among other things, a breakdown in the regulatory process in NRC Region I. During this period, Ellison refused to meet with OIA officials who sought to interview him for the purpose of obtaining additional information about his allegations.

On January 8, 1987, Edward Campbell telephoned Ellison, in reference to Ellison's December letter to OIA and his December 12 letter to OI. Campbell apparently requested that Ellison participate in an OIA interview. Ellison declined, stating that he had nothing to state beyond what he had already provided to the NRC in writing. Campbell summarized the conversation in a January 9, 1987 memorandum to George Mulley. According to Campbell, Ellison stated that Ellison had no specifics to back up his comments to the effect there "is a breach of the regulatory process in region one management." Campbell said:

> He [Ellison] feels that if he is interviewed, his house will be ransacked. This has happened to some people that he knows. He is currently under active investigation by the FBI. All his records have been subpoenaed because of this investigation. He will not admit any investigators to his home, nor will he agree to meet them at a neutral site.

In an INVESTIGATOR'S NOTE, Campbell said:

> During this short telephone conversation with Ellison, his language was replete with profanity. He called all NRC investigators f_ _ _ clowns. He said he wished no further contact from the NRC.

On January 8, after Campbell's telephone conversation with Ellison, Ellison called Ms. Connelly. In this conversation, according to Ms. Connelly's January 9 letter to Ellison, Ellison stated that he would meet with OIA once he got "all the pieces of the puzzle together" and that at this time he was seeking only a written response to his December 6, 1986 letter.

On March 5, 1987, as Ellison continued to decline to be interviewed by OIA, and without conducting an inquiry based on information provided by Ellison in his two letters to OIA and various telephone conversations, OIA informed Ellison that his "concerns regarding Nine Mile Point Nuclear Station, Unit 1, are being addressed by both Region I and the Office of Investigations." OIA then dropped the matter until Ellison contacted Ms. Connelly on August 5, 1988.

> [It is noteworthy that in its draft report on its Fortuna inquiry, OIA did not mention that Ellison's previous communications with OIA, and that by early 1987, OIA had decided that Ellison was not credible.]

At the time he wrote his January 16, 1987 letter to OIA, Ellison was aware of a January 14, 1987 secretly and perhaps illegally recorded telephone conversation between Fortuna and Stephen Comley[2] [3], an anti-Seabrook activist. Ellison would later allege that during this conversation, Fortuna and Comley conspired to discredit the NRC. It appears that Ellison did not during this period (i.e. late 1986 through early 1987) inform OIA of his apparent belief that Fortuna had engaged in criminal conduct.[4]

> [In the course of this inquiry, an OIA staff member, in responding to Congressional staff requests for information in February 1989, stated that in early 1987 OIA had concluded that Ellison was not credible; that he was a "fruitcake." Whatever Ellison's credibility in the eyes of OIA, the fact was that the Nine Mile Point safety problems he alleged in 1986 were found by the NRC to be real. This had led to imposition of a significant civil penalty upon Niagara Mohawk. As was typical of NRC's dealings with alleged significant violations of regulations, particularly those that might have been willful, the Ellison issues were regarded as isolated failings and it appears that no serious effort was made to determine whether these were in fact an indication of a widespread regulatory breakdown at Nine Mile Point.]

On August 5, 1988, nearly twenty months after OIA had decided that Ellison's allegations did not have sufficient merit to warrant further inquiry (and nearly 20 months after at least one OIA staff member designated him a "fruitcake"), Ellison again contacted OIA. At this time he said, among other things, that Fortuna had engaged in criminal misconduct by sharing information with unauthorized third parities concerning Ellison and several OI investigations. Such criminal conduct, said Ellison, occurred on or about January 14, 1987.

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[2] Comley owns a nursing home in the Seabrook emergency planning zone; he believes the NRC cannot be relied upon to protect the public safety, and he has expended a large sum in his effort to demonstrate that the Commission is a corrupt entity.

[3] Ellison routinely recorded conversations with NRC and utility officials without telling them. Comely may have done likewise in his telephone conversations with NRC officials.

[4] On the other hand, if Ellison did allege during this period that Fortuna had committed a criminal act, the former OIA Director should explain why she did not inform the Commission of this serious charge in early 1987. If Ellison delayed informing OIA of this matter until August 1988, OIA had a responsibility to determine at that time the reason for the delay. Yet we see no evidence that Connelly either informed the Commission of the matter in early 1987 or, beginning in August 1988, sought from Ellison an explanation as to why he had delayed bringing this allegation to the NRC's attention.

Ellison also alleged, according to OIA, criminal misconduct of a former NRC Commissioner and a member of the Commissioner's staff. Ellison also alleged professional misconduct on the part of OI staff by their mishandling of Ellison's case.

> [Note. Prior to contacting the NRC on August 5, 1988, Ellison had sought to sell information to Niagara Mohawk and to Comley. The GAC Report (p. 3) stated:
>
>> In July 1988, Ellison further confirmed these efforts when he telephoned Comley and said that he had gone to Niagara Mohawk seeking to sell information to the utility. Ellison stated he wanted $5000 from Niagara Mohawk and $10,000 from the NRC for this information, but that he would be willing to sell it to Comley for $5000. Ellison stated he was "desperate" for money and that he was going to be evicted. Ellison also asked Comley to locate a wealthy philanthropist to forward Ellison $5000.
>>
>> Neither Niagara Mohawk nor Comley agreed to buy Ellison's information.
>>
>> In the words of one NRC official intimately involved in OIA's investigation, James Blaha, at this time Ellison "was trying to peddle the information to anybody who he could sell it to."

On Wednesday, August 17, two OIA investigators travelled to Florida to interview Ellison for the purpose of obtaining additional information concerning his allegations. Ellison did not cooperate fully with the investigators. He provided additional information concerning his belief that his confidentiality had been breached and he implied that he might have physical evidence of safety violations at Nine Mile Point. The latter had apparently been dealt with by the NRC. Ellison would not share all his information with the investigators and he said the NRC owed him compensation for "pain and suffering." He apparently made statements to the effect that unless the NRC agreed by Friday, August 19 to compensate him, he would "go public to the press." [GAC, p. 6.]

On Monday, August 22, the OIA investigators briefed Ms. Connelly and her deputy, Fred Herr, on the August 17 Ellison interview. [GAC, p. 6.]

On Wednesday, August 24, Ms. Connelly spoke by telephone with Ellison, at which time he "stated his desire for a $5000 retainer for his consultant services, and he would come to D.C. with his complete files, including 'suitcases of taped conversations' which

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would 'take 3 days to go through.'" During this conversation Ellison indicated that Stephen Comley had 60 - 100 taped conversations of Fortuna. [GAC, p. 6.]

> [Note. These contacts with Ellison apparently led Ms. Connelly to believe that a contracting arrangement with Ellison would provide evidence, in the form of tapes and testimony, that would have a significant likelihood of establishing criminal wrongdoing by NRC employees including Fortuna. In seeking to establish the contract, Ms. Connelly sought the advice from Mr. Parler, the General Counsel, and assistance from Mr. Stello, the EDO.]

On August 24 or 25, Ms. Connelly sought Stello's assistance in an investigation of what Stello later said were "new allegations by Ellison concerning wrongdoing by NRC employees including Fortuna." Stello recollected that Connelly also reported "that Ellison had additional safety allegations that had not previously been reported." [GAC, p. 7.] With respect to Ellison's safety allegations, the GAC report (p. 7) stated that:

> However, Stello's recollection of learning about "additional safety allegations at this time does not appear to be supported by the contemporaneous record. Rather, the record of conversations OIA officials had with Ellison and notes of conversations between OIA officials and Ellison between 8/5 and 8/24 indicate that as of August 24, Ellison had not informed OIA of any specific safety allegations concerning Nine Mile Point that had not previously been provided to the NRC.

On Thursday, August 25, Ms. Connelly spoke with Mr. Parler, the NRC General Counsel who, by memorandum, advised her that with respect to establishment of an informant's fund he was not aware of any budget justification data in the NRC's existing authority which would authorize establishment of an informant's fund. Mr. Parler then stated:

> Please note, however, that until this matter is resolved generically, if a situation arises in which you determine that the availability of such funds has a direct connection and is essential to carrying out an investigation that relates to the agency's public health and safety mission, you should promptly provide the facts and seek OGC advice on the specific matter. (GAC, p. 7.)

On August 26, 1988 Mr. Parler "was asked to attend a meeting in Mr. Stello's office with Mrs. Connelly." Mr. Parler recalled that at the meeting he was told nothing specific about the informant's identify or OIA's inquiry. (GAC, p. 9.) Mr. Parler said Mr. Stello said that the information possessed by Mr. Ellison "could raise possible safety issues." (Gejdenson, Q-28.) At this meeting, Mr. Parler said he had gotten a clear impression that Stello had requested a person trained as a technical reviewer to examine Ellison's information and that the technical reviewer had concluded preliminarily that the informant's (i.e. Ellison's) information had safety implications. (GAC, p. 9.) At the October 12, 1989 hearing, Parler stated

> Mr. Parler. Well, I knew enough for me to give legal advice that there was authority to enter into a consultant services contract, that there was information available which appeared to have safety implications and they needed the services of an individual to help out in regard to providing consultant services for that information.
>
> > [Note. Malsch says at the time Connelly, Stello et al. discussed the matter with Parler they did not know if Ellison had new safety information:
> >
> > > .... it was known that Ellison had already supplied extensive safety information to NRC during several days of meetings between Ellison and NRC Region I personnel, and it was unclear at this point whether Ellison had any safety information not previously supplied to the NRC. Without such safety information it would not appear that Parler's conditions for a contract for information could be clearly satisfied. [AIG, p. 13-14.]
> >
> > Thus on October 12, 1989 Parler testified, in effect, that he believed that Connelly, Stello, et al. were telling him there was new safety information, when in fact they did not know whether there was information that would justify a contract. It is noteworthy that the AIG, in stating that it was known that Ellison had supplied information to Region I during several days of meetings, does not address the question of why, prior to approving the contract, Stello did obtain such information from Region I in order to determine whether Ellison was now offering to provide new data.]
>
> [Note. At the August 25 and 26 discussions, which were the only discussions with Parler prior to signing the contract, Parler was not informed that Fortuna was the target of the inquiry until after the contract was signed; it appears that neither Connelly nor Stello consulted with Parler during the period between the August 26 meeting and the September 1 signing of the contract.]

Mr. Parler, apparently believing it preferable that Mr. Ellison's information be obtained through a subpoena, informed Mr. Stello and Ms. Connelly that the NRC had broad subpoena powers In response, Ms. Connelly said a subpoena would not succeed in bringing forth the information that was being sought.[5]

The GAC report (p. 10) stated that Ms. Connelly cited two reasons for not seeking to obtain the information through a subpoena: (1) fear that the information would be destroyed; and (2) the desire to obtain not only the information, but the services of the informant to explain the information as well as the implications of the information.

The GAC report (p. 10) did not agree with Ms. Connelly's explanation:

> However, there was no evidence at that time that Ellison had threatened to destroy the information. To the contrary, he was threatening to "go public to the press." Connelly did not tell Parler that Ellison was unemployed and broke, and that he had flatly refused to cooperate unless he got paid. Nor did she mention Ellison's criminal law problems.
>
> > [Note. According to the April 24, 1989 issue of INSIDE NRC, Ellison himself asked: "Why didn't they subpoena me?"]

The AIG report (p. 30) concluded:

> All things considered, the decision to pay for information rather than to subpoena and, if necessary, issue one, it was a bad one.

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[5] In Question 26 of his May 1, 1989 inquiry, Mr. Gejdenson asked why OIA had not sought Ellison's tapes via a subpoena. The NRC response stated, in part, that issuance of a subpoena would have required Commission approval, that this would have led to additional NRC staff having become involved and, consequently, a higher probability that the existence of the tapes and ensuing investigation would become known before OIA had an opportunity to fully review and assess the evidence. This part of the NRC response made no sense in the absence of an NRC explanation of the adverse consequences growing from additional staff gaining knowledge of the tapes and associated investigation.

The NRC response to Question 26 also stated that Ellison's cooperation was needed in order to assist in reviews of the tapes and that such cooperation might not be forthcoming if the NRC resorted to a subpoena. In addition, the response to Question 26 stated that a subpoena, if resisted, could result in delays, in the case becoming public, and in possible destruction of the tapes.

The AIG said:

> .... there is absolutely no indication that Ellison would have destroyed the tapes - Blaha testified that he was not concerned after the Florida interview that evidence would be destroyed, and Connelly and Resner also stated that Ellison made no threat to destroy the tapes. [AIG, p. 29.]
>
> .... I see no reason to be concerned that issuance of a subpoena would have compromised the investigation. [AIG, p. 29.]

The GAC report (p. 10) stated that at the August 26 meeting Mr. Parler stated:

> ....there was authority to enter a contract if all of the following conditions were met: that the safety basis for getting access to the material could be fully documented; that neither the voluntary approach nor the subpoena route was available; that funds were available; and the applicable procurement procedures were followed.

On August 29 and 30, 1988, Ms. Connelly, Resner and James Blaha met with Ellison in Florida, at the request of Mr. Stello, to obtain "additional substantiation that Mr. Ellison's allegations warranted further pursuit."[6] Blaha recalled that, at this meeting, the new allegations presented by Ellison were general and that he (Blaha) did not get the details on them. (GAC, p. 11.) Blaha's notes indicated that what might qualify as new safety allegations were drug use by Niagara Mohawk employees and an unreported fire that had allegedly occurred at Nine Mile Point 1 in 1986. (Id.) The AIG report (p. 15), in addressing Blaha's feeling about the August 29-30 meeting with Ellison stated:

> Blaha's impression from his meeting with Ellison was that Ellison was a "flake" but had some documentary evidence worth pursuing. However, after the Florida meeting, Blaha did not know if Ellison's safety allegations were new or had any substance. [Underline added.]

Prior to the Connelly group departure for Washington, Ellison handed Ms. Connelly six tapes. (NRC response to Gejdenson Question 9.)

On August 30, 1988, according to Stello, Ms. Connelly et al. reported to Stello on their meeting with Ellison. According to

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[6] Stello letter to GAC, April 14, 1989.

Stello[7], Ms. Connelly et al. reported to him that Ellison had "dozens of tape recordings and boxes of documents which he believed supported his allegations." The GAC report (p. 13) indicates that at this meeting, Ms. Connelly played certain of this tapes in whole or in part. Among the tapes played was the recording of the January 14, 1987 conversation between Fortuna and Comley. The GAC report stated:

> According to Blaha, of greatest concern to Connelly was a tape recorded conversation between Roger Fortuna and Comley. Blaha recalls Stello's reaction: "I think he felt that based on what he heard on the tapes that there was evidence that [Fortuna] was, unless some overriding explanation could be given, that he was discussing agency business with an outside official and that was inappropriate for an official in his position, that was the basis for proceeding with the investigation."

Stello, in his April 14, 1989 letter to Senator Glenn, said that Blaha had informed him that "there was additional information concerning new safety allegations for Nine Mile Point Unit 1 related to an unreported fire, drug use, a safety pump that might not work, control rod drive problems, and inadequate handling of previous allegations.[8] (Stello letter to GAC, April 14, 1989.) The GAC report (p. 13) stated that "Stello claims that Blaha was able to document a series of health and safety concerns which warranted further investigations." Blaha, as noted by the AIG (see foregoing quote from AIG report, p. 1[illegible]), did not know if Ellison's safety allegations "really were new or had any substance."

> [Note: The AIG does not address the conflict between Blaha stating he did not know if Ellison's safety allegations were new or substantive and Stello's statements to the effect that Blaha had told him that Ellison's allegations were new. The AIG did, however, express doubt as to whether Stello could have made a determination as to the newness and significance of Ellison's allegations in the short period between the return of Blaha et al. from Florida and the September 1 signing of the contract:
>
> > ...only about one day elapsed between Ellison's interview by Connelly, Resner and Blaha in Florida and the signing of the contract, and it could not have been possible in that short period to determine with any certainty whether, in fact, Ellison's alleged new safety information was in fact new. Ellison said it was new,

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[7] Stello to GAC, April 14, 1989.

[8] A purportedly complete listing of the Ellison allegations appears in the NRC's May 22, 1989 response to Question 5 of Mr. Gejdenson's May 1 inquiry.

> but there is no reason to suppose that Ellison could have been familiar with the universe of safety information already possessed by the NRC. Had OIA, Blaha and Stello taken more time to consider the matter, there would have been more time to look into the safety allegations and to check on Mr. Ellison's past dealings with the NRC. If it had been learned that Ellison had been turned down once before by NRC when he requested money for information, for example, this could have given those eager to enter into the contract some pause.
>
> In my opinion, the decision to enter into the contract was made too hastily and without adequate consideration if one is to assume that obtaining information from Ellison the principal justification for the contract.
>
> [AIG, p. 31.]

The GAC report (p. 13) questioned the extent to which Blaha had in fact informed Stello of new safety allegations at this point; it stated that there were no confirming notes of Blaha's statements concerning Ellison's safety allegations and that "Details of the 'new' allegations were documented by Blaha only after Ellison was brought to Washington to be interviewed again in September 1988 under a consultant contract."

> [Note. As noted above (see preceding paragraph), Blaha had recalled that Ellison's presentation concerning new allegations was general and that Blaha had not gotten the details on them.[9] The AIG report, as noted above, stated that Blaha did not know if Ellison's safety allegations were really new or had any substance.]

On September 1, 1988, apparently ignoring Mr. Parler's August 5 opinion with respect to what should be done prior to letting a contract, Ms. Connelly sent a memorandum to Mr. Stello on September 1 requesting Mr. Stello to establish arrangements for contracting with Ellison.[10] According to the AIG report (p. 16), Blaha prepared this memorandum for Connelly's signature. The memorandum had Connelly stating:

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[9] While certain of the Ellison allegations fell into the jurisdiction of OI, they apparently were not referred to OI. Moreover, one of Ellison's more serious allegations - that Niagara Mohawk caused criminal charges to be brought against him with regard to a matter that had nothing to do with Niagara Mohawk - was not mentioned either in the Stello letter or in the response to Question 5 in Mr. Gejdenson's inquiry.

> This is to document previous discussions between us about allegations made by an individual concerning wrongdoing by an NRC employee and concerns about safety issues. After personally interviewing the individual, I am convinced of the following:
>
> - The individual has information which is relevant, necessary and essential to further investigation of wrongdoing and safety-significant issues.
> - The individual will not provide this information unless he is reimbursed for the services and documentation he provides.
> - Complete confidentiality is essential to successful pursuit of this matter. This precludes use of conventional contractual travel, and other reimbursement procedures which call for identification of the individual's name.

[Note. With respect to the first item, Connelly (signing on to Blaha's memorandum) would have had no basis for being convinced that Ellison had information relevant, necessary and essential to further investigation of safety-significant issues. Blaha, having just returned from meeting with Ellison in Florida, had the impression that Ellison was a "flake" and, while he might have some documentary evidence worth pursuing, he did not know if the safety allegations were new or had any substance. (AIG, p. 15.) With respect to the second item, the AIG (p. 29) said "there is absolutely no indication that Ellison would have destroyed the tapes - Blaha testified that he was not concerned after the Florida interview that evidence would be destroyed, and Connelly and Resner also stated that Ellison made no threat to destroy the tapes." In light of there being no threat to destroy the tapes (in fact, Ellison had no incentive to destroy them) the claim, ~~that~~ they could be obtained only through a contract, was vacuous and misleading and used in a deceitful manner to justify the contract.]

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[10] On August 31, before the contract was established, Mr. Resner received from Mr. Blaha $535. Of this amount $35 was to cover a "wiring charge" and $500 was an "Advance to consultant [Ellison] for recorded tapes and future services."

[Note. It thus appears that the contract with Mr. Ellison was established with neither Mrs. Connelly nor Mr. Stello having made a determination that the conditions specified by Mr. Parler on August 26 had been met. That is:

> that the safety basis for getting access to the material could be fully documented; that neither the voluntary approach nor the subpoena route was available; that funds were available; and the applicable procurement procedures were followed.

- It also appears Ms. Connelly ignored Mr. Parler's August 25 admonition (see above) that, if the availability of an informant's fund was essential to carrying out an investigation relating to the NRC's health and safety mission, Ms. Connelly should promptly provide the facts and seek OGC advice on the specific matter.

The view of the General Counsel on the contract versus subpoena question was stated in the response to Mr. Gejdenson's inquiry, Question 26, as follows:

> .... had the General Counsel known the nature of the investigation, including which individuals were involved and relevant background information about the external source, he would have insisted that, if the agency decided to proceed with an inquiry into the matter, it issue a subpoena to Mr. Ellison.

The AIG came to a similar conclusion (p. 29 - 30):

> In my opinion, a subpoena should have been threatened and, if necessary, issued. .... I find no sound reason why a subpoena was not used and the reasons for not using one are not, in my judgement, persuasive. .... All things considered, the decision to pay for the information rather than to threaten a subpoena and, if necessary, issue one, it (sic) was a bad one.]

On September 1, 1988 - the same date on which Ms. Connelly sent her memorandum to Stello requesting that Stello establish arrangements for contracting with Ellison, Stello approved the contracting arrangement. On that date, Mr. Edward Halman, Director of the NRC Division of Contracts and Property Management, signed a contract with Ellison providing for Ellison to be paid $4000 in consulting fees and $2000 in expenses during a period commencing on September 1 and ending on September 16.

[Note: Subsequently, Stello rationalized approving the contract on the ground that the potential significance of Ellison's safety allegations was great, that at the time the Ellison contract was entered into startup of Nine Mile Point

Unit 1 was projected to occur in 1988 and "it was important to promptly pursue these allegations." In his October 12, 1989 testimony, Stello stated:

> Everything that I knew of regarding Mr. Ellison and the information he had caused me to come to no other conclusion except that these allegations were likely to be correct. He did so in the past. The documents and the information he had as described to me by Mr. Blaha caused me to reach no other conclusion than that these allegations would turn out to be substantiated.

Stello's real reason for proceeding with the contract is more likely than not the January 14, 1987 tape which Blaha said had been played for Stello on August 30.

> Stello, if Blaha's recollection is correct, appears to have concluded that the tape contained significant evidence of wrongdoing by Fortuna. In this regard Stello's assessment was in error. Subsequent reviewers (i.e. the FBI and Assistant U.S. Attorney, the staffs of the House Subcommittee on Energy and Power and the Senate Committee on Government Operations, Judge Rosenthal, and Mr. Hyland, a former FBI agent and Department of Labor Inspector General, who at the behest of the NRC Inspector General reviewed the January 14, 1987 tape, all concluded that the tape did not contain evidence warranting the actions the NRC sought to take against Fortuna. Indeed, Connelly herself appears to have concluded that this tape was not significant because she did nothing with it between late September 1988 after she had been told by the FBI and Assistant U.S. Attorney that it did not show that Fortuna had committed a criminal offense.

Stello's rationalization resting on the likelihood that Ellison's allegations would be substantiated and that restart of Nine Mile Point Unit 1 was projected to occur in 1988 is not credible for several reasons:

> Even though, a $50,000 fine resulted from Ellison's previous allegations, the NRC did not consider them to have been of great safety significance. In its report on the investigation of Ellison's previous allegations, the NRC staff stated:
>
> > We concluded that many of the circumstances described in the allegations were substantially true, but the technical significance of these substantiated allegations were found to be generally minor and no immediate safety concerns were identified. [April ???, 1987, cover letter forwarding Inspection Report 50-220/86-17.]

Never during the period when Stello was considering authorizing the contract, nor during the contracting period, nor subsequent to it, was Nine Mile Point Unit 1 restart projected to occur in 1988. Stello's statements (that Nine Mile Point Unit 1 was "projected to start up again in the fall of 1988") in his April 14, 1989 letter to Senator Glenn and his October 12, 1989 testimony before the Subcommittee on General Oversight and Investigations appear to be false. [See Appendix A.]

Stello did not immediately turn over the Ellison allegations to the NRC staff responsible for assessing the merits of allegations. Nor did he assign a technical person familiar with Nine Mile Point to interview Ellison during the period of the contract; instead he assigned the task to Blaha whose qualifications to assess the significance of Ellison's information was minimal at best and considerably less than many NRC staff experienced in the generalities and specifics of the Ellison allegations.

> [Note. Stello contends that the delay in turning over the Ellison allegations to qualified NRC staff (i.e. the delay that lasted until March 1989, a time after the Fortuna matter had become public) was justified by the delay in Unit 1 restart date. The GAC report (page 23) stated the following as Stello's rationale for delaying acting upon the new safety allegations:
>
> > Stello asserted in his April 14 letter that during the course of Blaha's interviews with Ellison -- from September 1 through September 16 -- "the projected startup date for the plant had slipped [and] there was no immediate need to address these issues."
>
> In his October 12, 1989 testimony Stello reiterated his April 14 statement to Senator Glenn:
>
> > Because the projected startup date for the plant had slipped, there was no immediate need to address these issues.
>
> Stello's contention that the delay in the startup date of Nine Mile Point Unit 1 reduced the urgency of determining the validity of Ellison's allegations is not credible because of the nature of Ellison's charges. These were, in effect, that certain Niagara Mohawk managers were so lacking in integrity as to disqualify them for supervisory positions in

> the company's nuclear activities. Since investigations of such charges would more likely than not take more than a year to complete, the time urgency of chasing down the Ellison allegations, in order to determine promptly whether the potentially lengthy wrongdoing inquiry need be initiated, was not reduced by virtue of the startup date for Nine Mile Point Unit 1 being deferred.
>
> Moreover, certain of Ellison's allegations, such as those concerning drug use at Nine Mile Point affected Unit 2 as well as Unit 1. Since Nine Mile Point Unit 2 was operating, it was inappropriate - Stello himself stated at the October 12 hearing that it was "a stupid oversight" - to have waited until March 1989 to address Ellison's drug allegations. As indicated below, the most likely real reason for Stello's failure to immediately refer Ellison's allegations to appropriate and qualified NRC staff was that Stello had been told by Blaha that Ellison had not turned over new safety information that was significant.]

Ellison's employment at Nine Mile Point had ended in April 1987; he had previously presented his concerns to the NRC and there was little reason to believe that he would have important information that had not previously been provided to the NRC. In fact, Blaha appears to have concluded that Ellison's "new" allegations were but a rehash of the old; thus the GAC report (p. 23) states:

> Blaha testified that in the end, he was able to determine that in almost all of the instances, Ellison's allegations had been addressed by Region I, and they had taken what they considered to be appropriate action. In other instances such as the allegation that anyone could dial in and get access to the computer, Blaha was able to determine that it was not "new" at all or, after consulting Stello, that it did not have immediate health and safety significance.

Stello's claim that extraordinary steps were called for to assess the validity of Ellison's assertions is not believable in light of the NRC's history of making light of allegations that are more significant, more time urgent, and more credible than Ellison's.[11]

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[11] Blatant examples of NRC not dealing in a timely and serious manner with credible allegations are the cable and procurement issues at TVA. Also, with respect to TVA, the NRC

> The record indicates that OIA focussed its activity during the period of the Ellison contract upon Ellison's allegations of criminal misconduct on the part of Fortuna. This focus undermined Stello's contention that, in his mind, the reason for the extraordinary contracting arrangement, was to obtain information concerning "new" safety allegations. As noted above, to the extent that safety issues were addressed, Blaha concluded that Ellison did not have anything to say about safety that was both new and significant.]

On September 2, 1988, Ms. Connelly, following a directive from Chairman Zech, briefed Mr. Parler on the details of the investigation. While in Russia, the Chairman had been informed on August 26 of Connelly's request to establish an informant's fund. On September 2, upon his return to NRC headquarters, the Chairman learned from Mr. Parler that Connelly had initiated the investigation, that a contract had been signed, and that Fortuna was a target. The GAC stated (p. 16) that on this date Ms. Connelly informed Chairman Zech that Fortuna was the target of the investigation and that tapes were involved. The Chairman directed Ms. Connelly to brief Mr. Parler on the details. The GAC report (p. 16) states that in this briefing, Ms. Connelly "did not share a great deal of specific detail about the investigation." The GAC report (p. 16) stated:

> Parler, aware of a history of problems over OIA investigations of OI personnel and of problems between Fortuna and Connelly, ... immediately warned Connelly that she would be viewed as being vindictive. He said that the "worst combination" that could have been put together was Stello and Connelly investigating Fortuna; that Connelly was starting with "unnecessary excess baggage" at the outset because of the history of tension between OIA and OI; and that she might find a logical explanation for Fortuna's behavior with individuals outside the NRC. Parler also recalled that when he learned that Fortuna was the real target, and it was Connelly and Stello who were in charge of the investigation, he advised the Chairman's office that it was a "no win" situation for the agency.

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failed over a two year period to take a clear position on the truthfulness of statements made by the TVA Nuclear Manager. The truthfulness of the manager was an important regulatory matter since the NRC's decisions to allow operations of TVA reactors relied upon the completeness and accuracy of the Nuclear Manager's submittal; if such submittal could not be assumed to be truthful, the NRC could not have properly authorized restart of the Sequoyah reactors.

When questioned about this matter in April, 1989, Parler stated: "Had I known on August 25, 1988, what I subsequently learned in recent months I would have urged the Agency to proceed with the issuance of a subpoena if indeed the information was needed for a valid regulatory purpose." In Parler's view, there was no legal impediment to the issuance of a subpoena. He further indicated that had he been told all the facts about Ellison, he would have changed his advice about the feasibility of the contract because when one is dealing with a consultant, in his opinion, one must deal with someone who is "responsible and credible."

Ms. Connelly testified on October 12, 1989 that on September 2, 1988 she had told Mr. Parler about the tapes, a recollection which Mr. Parler did not share. Ms. Connelly testified:

> Mr. Kostmayer. So you provided Mr. Parler with a briefing?
>
> Ms. Connelly. Yes.
>
> Mr. Kostmayer. So you remember somewhat of what you said?
>
> Ms. Connelly. Yes.
>
> Mr. Kostmayer. Did you tell him about the tapes?
>
> Ms. Connelly. Yes, I'm sure I did.
>
> Mr. Kostmayer. You told him about the tapes of the meeting on September 2 or thereabout?
>
> Ms. Connelly. I am sure with a high degree of certainty that I told Mr. Parler everything that I knew about the case up to that point.
>
> Mr. Kostmayer. I think Mr. Parler will testify that you didn't tell him about the tapes.
>
> Ms. Connelly. On September the 2nd?
>
> Mr. Kostmayer. Or thereabouts. At that meeting which took place in early September I don't know if it was the 2nd or the 1st or the 3rd. Whatever it was. I think Mr. Parler_and I am willing to be corrected if I am proven wrong_I believe in his testimony and I believe that he has told us that you did not tell him about the tapes. Maybe I don't remember and he does.
>
> Ms. Connelly. No, I am sure I told him about the tapes because at that point I had heard excerpts Mr. Parler,

> I believe is referring to the first meeting that he had with Mr. Stello and I.
>
> Mr. Kostmayer. Well, he says he didn't learn about the tapes until 1989.[12] This is now early September of 1988. He says he didn't learn about the tapes until the next year. This is the late summer, early fall, of 1988. You just have a different recollection?
>
> Ms. Connelly. No, I'm sure that I briefed Mr. Parler that we had tape recordings, yes.
>
> Mr. Kostmayer. So you and Mr. Parler have a disagreement.[105]

Mr. Parler's recollection of whether he had been informed about the tapes on September 2 differed from that of Ms. Connelly:

> Mr. Kostmayer. Now, Mr. Parler, let me start off with asking you very specific question about these tapes about which we have heard so much. Were you here when Ms. Connelly testified that she told you about these tapes in a meeting on or about September 2nd?
>
> Mr. Parler. Yes, sir.
>
> Mr. Kostmayer. Did you hear her?
>
> Mr. Parler. Yes, sir.
>
> Mr. Kostmayer. Is your version the same as hers?
>
> Mr. Parler. My recollection is different. But I am not saying that I am correct and she is incorrect
>
> Mr. Kostmayer. Can you tell me how it is different?
>
> Mr. Parler. I don't recall hearing anything officially about tapes, and I emphasize ``officially.''
>
> Mr. Kostmayer. I am not interested in what you heard officially. I don't want you to characterize what you heard; just tell me what you heard. Did she tell you about the tapes?
>
> Mr. Parler. My recollection is she didn't.

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[12] At a later point in the hearing, Mr. Parler said that he had learned about the tapes unofficially and from persons other than Ms. connelly during September 1989.

Mr. Kostmayer. She did not tell you about the tapes?

Mr. Parler. That's correct.

Mr. Kostmayer. She says she did.

Mr. Parler. Well, she had a comprehensive briefing to give; the purpose of the briefing was for her to brief me. So, I can understand why her recollection might differ from mine. Busy people. Recollections differ.

Mr. Kostmayer. Well, how firm is your recollection?

Mr. Parler. My recollection is that I officially learned about the tapes_

Mr. Kostmayer. Why do you keep saying ``officially''? I am just asking what this conversation is that took place, officially or unofficially.

Mr. Parler. Because about the end of September there was information from various staff people in Commission offices that there may be tapes involved.

Mr. Kostmayer. I will ask you once more, then go on. Your recollection is pretty firm or not very firm or what?

Mr. Parler. My recollection is pretty firm. But I want to emphasize that I am not holding myself out as being infallible and I am directing that something is wrong.

Mr. Kostmayer. You have a firm recollection that Ms. Connelly did not tell you about the tapes in early September?

Mr. Parler. I have no recollection that anybody told me about the tapes in early September.

Mr. Kostmayer. When did you first learn about them?

Mr. Parler. I first heard that there may be tapes involved around the end of September. [168]

> [Note. The foregoing shows that Mr. Parler's consistent position that, had he known the facts, he would not have approved the contract with Ellison, his recollection that Ms. Connelly did not tell him about the tapes on September 2, 1988 directly conflicts with Ms. Connelly's recollection to the contrary. This is an important discrepancy that we believe needs to be resolved by the NRC

> Inspector General's ongoing inquiry into the matter.]

The contracting period extended from September 1 to September 16, 1988. Ellison was paid in cash, from a fund specifically set up for the purpose, apparently as part of the effort to conceal the fact that a contracting arrangement had been established with him.

During the period covered by the contract, OIA interviewed Ellison in a hotel in Vienna, Virginia. The only substantial work product of which we are aware resulting from the contract were a few pages of notes and tape transcript corrections and a transcript of the September 12, 1988 interview of Ellison by OIA Director Connelly and Assistant Director for Investigations, Mark Resner.

During the September 12 interview with OIA, Ellison made statements alleging that Niagara Mohawk had caused sexual molestation charges to be brought against him. Ellison also said that Niagara Mohawk coerced certain of its employees to testify against him in conjunction with these charges.

> [Note. Ellison was accused of an act of sexual molestation that had allegedly occurred in 1985. While Ellison did enter a guilty plea in the matter, he now says he was innocent and that he pled guilty to a low level offense in order to put the matter behind him.]
>
> In response to Ms. Connelly's asking Ellison whether he believed that Niagara Mohawk had anything to do with the sexual molestation charges being filed against him, Ellison said:
>
> > I would go to my grave swearing that Niagara-Mohawk had me arrested on these charges, without a doubt.[13]
>
> Ellison also stated his belief that Niagara-Mohawk had pressured Nine Mile Point employees to make statements to New York State police investigators, claiming that Ellison and his wife engaged in "perverted sexual activity."[14]
>
> Whatever the validity of Ellison's allegations that Niagara Mohawk was responsible for criminal charges being brought against him, this allegation was as credible and more serious than anything charged against Fortuna. Yet the charges against Fortuna were pursued with great vigor and there is no indication of Ms. Connelly taking any action to inform either OI or her NRC superiors of the allegation that Niagara Mohawk

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[13] September 12, 1988 Transcript, p. 24.

[14] September 12, 1988 Transcript, p. 26.

sought to discredit Ellison by surfacing the babysitter molestation issue.]

[Note. The contract with Ellison, which ended in mid-September 1988, did not provide Ms. Connelly any evidence of criminal wrongdoing by Fortuna; i.e. that he had conspired with Stephen Comley in a criminal manner seeking, in the words of an OIA draft report, "to topple" the NRC, and in so doing had allegedly committed criminal acts. After being briefed on the Ellison information by Connelly and Resner, an Assistant U.S. Attorney concluded that there was no evidence that Mr. Fortuna had committed a criminal offense. (See September 21, 1988 entry in chronology.)

> (It is particularly noteworthy that Ms. Connelly seems to have made no attempt to interview Comley, the other purported principal in the alleged conspiracy, to "topple" the NRC, and the person who, if the appropriate investigatory process was being employed, should have been interviewed prior to Fortuna; i.e. had there been a conspiracy "to topple" the NRC, Fortuna would have been a more significant party, and standard investigative procedures would therefore have called for Comley being interviewed prior to Fortuna.)

Connelly herself appears to have concluded that the Ellison contract had provided no evidence that Fortuna had acted with Comley in furtherance of an illegal scheme activity since the record shows that after mid-September, the charges against Fortuna (and investigation of same to the extent any was conducted) were limited to allegations that Fortuna had somehow compromised Ellison's confidentiality and/or he had not adequately fulfilled his responsibilities in regard to Ellison's assertions about Nine Mile Point. These reduced charges, if true, would have involved potential poor judgement in the conduct of his NRC duties rather than criminal acts.

The evidence indicates, however, that even the reduced charges against Fortuna were ill-founded. Ellison had gone public with his allegations against Niagara Mohawk long before the acts charged to Fortuna had occurred. Also, as noted in Chairman Sharp's May 23 letter to the Commission, Mr. Fortuna's passing information about Mr. Ellison to Mr. Comley was not improper because the information had appeared in newspapers and Mr. Comley was already aware of it. Finally, responsibility for dealing with Ellison's charges was distributed among many NRC offices including OIA; each NRC office had a reason for having ceased its pursuit of these charges. If there in fact had been reason to persist in pursuit of Ellison's original allegations concerning problems at Nine Mile Point, other NRC staff were as or more culpable

> than Fortuna for a failure to do so, and there is no evidence that any of the others became subject of an OIA inquiry.]

The AIG report (p. 17) assessed the usefulness of the Ellison contract:

> The results of the contract with Ellison appear marginal. The circumstances of the taped conversations, especially the Fortuna-Comley conversations, were described, and corrections were made by Ellison of the transcripts from the tapes, but most of the tapes were intelligible so that Ellison's assistance, while useful, does not appear to have been critical. Blaha, who was responsible for passing Ellison's safety information on to Stello for Stello's evaluation, recalls that the contract produced no significant new safety information beyond what was already known from the Florida interview. In fact, it was later learned that much information, including some tapes, had previously been supplied to NRC Region I when he offered to provide information for money. Also the critical tape of the January 14, 1987 Fortuna conversation with Comley, which had been given to OIA in Florida, had been widely disseminated by Ellison to the media, law enforcement agencies, and others.

On September 21 Connelly and Resner visited Assistant U.S. Attorney Joyce McKee in Baltimore, presenting the information about Fortuna that had been obtained from Ellison. The purpose of the visit apparently was to seek advice as to whether Ellison's information might indicate criminality on Fortuna's part. Tape recordings and Ellison's statements were discussed and Ms. McKee apparently decided there were be no basis for a prosecution.

On September 23, Ms. McKee confirmed this decision in a letter which states in relevant part:

> The tape recordings do not disclose that Mr. Fortuna participated in the commission of any criminal offense, including obstruction of Nuclear Regulatory proceedings, making false statements to the Nuclear Regulatory Commission, or obstruction of communication of information regarding possible criminal violations. The January 14, 1987 tape of a conversation between Mr. Comley and Mr. Fortuna is incomplete, which creates an evidentiary problem.
>
> You stated that in your own earlier contact with Mr. Comley, you had dismissed him as "a flake." Mr. Comley obviously has an interest in exaggerating the nature and extent of his relationship with Mr. Fortuna. For these reasons, I do not think any characterization by Mr. Comley of his relationship with Mr. Fortuna made in telephone conversations taped by Mr. Ellison would be reliable.

> Besides the fact that the tape recordings do not show any criminal activity on the part of Mr. Fortuna, Mr. Ellison appears to be a very slender reed on which to rest a criminal case. He has a conviction for a sexual offense, a work history involving an extensive absence for mental health reasons and a long period of subsequent unemployment. His practice of tape recording private conversations may have violated state laws depending upon his location at the time of recordation. Moreover, you have paid him $5000 and have stated that he claims to have worked for the Federal Bureau of Investigation as an informant in the past. As a witness, his credibility could be impeached by some or all of these facts.
>
> > [Note. It is unclear whether Ms. Connelly provided the above referenced letter to the Commissioners and/or Mr. Parler and/or Mr. Thompson prior to the initiation of termination proceedings against Mr. Fortuna.]

On November 4, 1988, one and one-half months after expiration of the contract with Ellison, OIA conducted an interview with Fortuna. This report of this interview is dated December 14, 1989, 40 days after the date of the interview, and 30 days after the expiration of the ten day period which was the maximum allowed by the OIA manual for preparation of such reports.

> [Note. The timespan first between the receipt of Ellison's information and the Fortuna interview and then between the interview and preparation of the interview report are indicative of Fortuna investigation having been much lower on OIA's priority list than was subsequently suggested by Connelly et al.]

The November 4 interview, according to Hugh Thompson's February 9, 1989 memorandum to Fortuna, concerned the Ellison allegations relating to OI breaching of Ellison's confidentiality and not dealing adequately with concerns about Nine Mile Point. The November 4 interview did not address Ellison's allegations concerning the purported Comley-Fortuna conspiracy, which was the allegation that was prominent among the charges that caused OIA to initiate its inquiry.

> [The GAC report stated that during the course of the November 4 interrogation, Fortuna asked whether he was the target or subject of the OIA investigation. In response, according to the GAC report, Herr and Resner gave Fortuna answers that were "deliberately vague and inaccurate." The GAC authors stated:
>
> > We do not believe the explanations provided by the OIA participants, who sought to characterize the purpose to this interview as merely to gather background information from Fortuna, not to interrogate him about his knowledge

>> with respect to Ellison, can be taken seriously. In the OIA memoranda of interview, Ellison's name appeared as many as 38 times during the interview. We believe the NRC should seriously consider the propriety of the conduct of all the OIA supervisors who participated in this interview and in the strategy sessions leading up to the interview.] (GAC, p. 31.)

> [Note. In their March 6, 1989 affidavits, OIA investigators Resner and Herr stated that the November 4 Fortuna interview was part of an investigation OIA was conducting in "October-November, 1988" concerning "the manner in which OI considered and acted upon allegations from Douglas Ellison." It is noteworthy that the Resner/Herr statement that OIA was conducting its inquiry in "October-November, 1988" misrepresents the situation by incorrectly describing the time span of the OIA inquiry into the allegations against Fortuna. Resner and Herr were fully aware that Ms. Connelly and Resner had met with Ellison in August; that NRC had contracted with Ellison in September; that Ellison resided in a hotel in Vienna, Virginia during two weeks in September while under contract to the NRC and under supervision of Resner and Ms. Connelly; and that Ms. Connelly and Resner themselves had conducted a recorded interview with Ellison on September 12 and met with him on other dates in September. According to the Commission's response to Question 31 in Chairman Gejdenson's May 1, 1989 inquiry, of a total of some 396 OIA staff hours expended upon the OIA Ellison-Fortuna matter in the August thru November time period, 85 hours were expended in August, 173 in September, 48 in October, and 90 in November.]

Ellison claims that on December 16, 1988, he contacted Mark Resner, OIA's Director of Investigations, and informed Resner that he (Ellison) was going to tell the Niagara Mohawk story to 60 MINUTES since it appeared that noting was being done by the NRC.

On December 19, 1988, Ellison was interviewed by the FBI in the presence of an Assistant U.S. Attorney for the Southern District of New York. During the interview Ellison reiterated his charges that Niagara Mohawk had willfully violated NRC regulations and that Niagara Mohawk had sought to harass and intimidate him. He also indicated that NRC had concealed the significance of the Nine Mile Point regulatory violations.

In his December 19 interview with the FBI, Ellison also said something to the effect that he believed Ms. Connelly's contract with him was merely for the purpose of NRC discovering what information he had. Ellison told the FBI he believed the NRC had no intention of doing anything with this information. [In the latter regard we believe Ellison was largely correct; NRC had no intention of pursuing Ellison's charges against either Niagara

Mohawk or NRC staff, other than Fortuna, who was but one of several NRC employees who had determined that the Ellison allegations had been adequately dealt with. In any event, had Fortuna and OI pursued Ellison's safety concerns, they would have had little to go on once the regulatory staff concluded, as it had already done, that there was minimal safety significance to such concerns.]

In late January 1989, almost three months after the November 4 interview with Fortuna, OIA sought to interview him again. In their March 6, 1989 affidavits prepared for the U.S. District Court, Resner and Herr stated that "investigation and information obtained by OIA" subsequent to the November 4 Fortuna interview, which Resner said had "led OIA to conclude that another interview would be necessary." Neither Herr nor Resner described the nature of information gained subsequent to the November 4 interview which led OIA to decide that a second interview would be required. Nor is there evidence in the available record to indicate the nature of such information if in fact such information exists.

The new information, if any, was unlikely to have been provided by Ellison, since Ellison's evidence had presumably been given to OIA during Ellison's August and September 1988 encounters with Ms. Connelly and Resner. The E&P report (p. 10) stated, in fact, that no questions prepared for the proposed second Fortuna interview were based on information other than that provided by Ellison in September. The E&P report also stated that there was no evidence of OIA investigatory activity after the first Fortuna interview or that subsequent information had been obtained by OIA.

> [Note. The lack of a description of the specifics of the new information indicates that the impetus behind the call for a second Fortuna interview might well have been Ellison's having told OIA the preceding December that he was telling his story to 60 MINUTES; i.e OIA became concerned that national television might pick up on Ellison's view that the secret cash contract was part of an NRC attempt to cover up NRC wrongdoing and/or ineptitude.]

Resner and Herr, in their March 6 affidavits, said that the next Fortuna interview would "focus on the manner (sic) Fortuna performed his official duties." Herr, but not Resner, said that because of the focus on Fortuna's performance, "OIA concluded that Fortuna was now a 'subject' of the investigation."[15] This time OIA said that the interview would be sworn and recorded, and that Fortuna had no right to have an attorney present. Fortuna and his attorney, Julien Greenspun, repeatedly requested OIA to cite its authority to require that an interview be conducted in accord with such conditions; OIA investigators were unable or unwilling to do so and they reiterated their contention that Fortuna had no right to have an attorney present.

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[15] Herr, Tr. p. 3

On or about February 7, 1989 Hugh Thompson, the NRC manager to whom OI reported, was advised by Ms. Connelly that "OIA had been conducting an official investigation in a matter" in which Fortuna's testimony would be required. According to his March 7 affidavit, Thompson said that Ms. Connelly had also advised him on or about February 7 that the investigation "concerned a matter of significance and urgency to the NRC .... and that OIA staff was experiencing difficulty in their attempts to arrange a date" on which Fortuna would agree to be interviewed. Thompson also stated in his affidavit: "She [Connelly] did not at that time (on or about February 7) describe to me the nature of the investigation."

> [It is noteworthy that Ms. Connelly, who was aware of a matter of such supposed significance since the preceding August, 1988, delayed informing Fortuna's superiors of it in even a cursory manner until February 7, 1989. If the matter were of such significance and urgency, as to require expedited action by OIA, there needs to be an explanation of why OIA delayed more than four months before informing Fortuna's superiors so they might decide what if any actions might be called for while the investigation proceeded. With respect to the protracted nature of the OIA inspection, the GAC report stated on page 30:
>
>> Despite obtaining the Ellison tapes in September, OIA proceeded at a snail's page to conclude its investigation. Since the heart of OIA's case, if any, revolved around the recordation of the Fortuna-Comley conversations, it is inexplicable why OIA took no action between September 1988, and January 1989, to confront directly Comley and/or Fortuna. If the materials against Fortuna were damning (which they do not appear to be from our review or the U.S. Attorney's Office review) OIA should have brought this matter to a conclusion expeditiously, before memories were allowed to fail.
>
> It is also noteworthy, that Thompson, as was the case with other NRC regulatory officials, appears not to have acted upon allegations made by Ellison with respect to other NRC and licensee employees.]

On February 9, in a memorandum signed by Thompson, Fortuna was directed to submit to OIA questioning under conditions set by OIA. The memorandum stated that while Fortuna had no right to be accompanied by counsel, there would be no objection if this were to happen. The memorandum stated that the NRC could not be reasonably expected to delay the interview given the "significance of your responsibilities" and "the nature of the allegations being investigated." The memorandum stated that Fortuna's failure to comply with his directive to submit to OIA questions could lead to his removal from the NRC.

On February 13, Fortuna's attorney, wrote a hand-delivered letter to Thompson stating concerns that Fortuna was being subjected to a process in which his constitutional and statutorily protected interests were being overridden. Mr. Greenspun also informed Thompson of Fortuna's concerns "about retaliatory or vindictive action being taken or recommended by OIA."

On or about February 13, apparently after receiving Greenspun's February 13 hand-delivered letter, Thompson, according to his March 7, 1989 affidavit, was advised by Ms. Connelly and her Deputy, Fred Herr, "in general terms of the nature of the investigation they were conducting" which required Fortuna's cooperation. It appears, therefore, that Thompson issued his February 9 directive which included a threat to terminate Fortuna, without full awareness of even the "general terms" of what the Fortuna matter was about.

On February 14, still having awareness of only the "general terms" of the matter, Thompson reiterated his February 9 directive and admonition which had stated that the NRC could not be expected to grant an interview postponement which would delay the investigation further. Thompson said in his March 7 affidavit that his February 14 memorandum to Fortuna had been sent in response to a request from Ms. Connelly. However, Thompson appears to have had an inadequate basis for his claims as to the gravity of the allegations and the urgency of the interview since he had not been fully briefed on the nature of the Fortuna investigation. The evidence does not support his actions; rather, Thompson's March 7 affidavit shows that he sent directives and warnings to Fortuna without himself having been fully informed as to the nature of the case.

The push to have the interview occur immediately was significant to Fortuna. While OIA had by then agreed to allow the presence of counsel, Fortuna's attorney had scheduling difficulties and Fortuna sought to postpone the interview for a time of less than one month. The denial of a postponement has all the appearances of further harassment of Fortuna since the information pertaining to the allegations against Fortuna had been presented to Ms. Connelly five months earlier, in August 1988, and until January 1989, OIA had shown no rush to get to the bottom of the matter.

While he continued to object to the process to which he was being subjected, Fortuna indicated his willingness to participate in an interview that was not recorded if his attorney were granted sufficient time to review relevant materials beforehand. Denying the delay requested by Fortuna, and without providing Greenspun the opportunity to review adequately the relevant materials, OIA insisted that the interview be conducted on February 15. On this day Fortuna and his attorney appeared before OIA interviewers who made clear that the interview would be under oath and recorded.

At the February 15 meeting, Fortuna's attorney stated that Fortuna would submit to a sworn, transcribed interview _if_ the OIA interviewers would cite their authority to require such conditions. Fortuna's attorney repeatedly and unsuccessfully sought to elicit from the OIA interviewers a reference to the NRC policy which enabled them to require that Fortuna appear to answer questions under oath in a transcribed session at which he did not have a _right_ to legal representation. Fortuna's attorney, Greenspun, noted that he would be unable to provide appropriate assistance to his client because he had not seen the documents that might be used as the basis for questions.

With respect to OIA's insistence upon recording the interview, Fortuna's attorney, at the February 15 meeting, accused OIA of being inaccurate when the OIA interviewers said they wanted the transcript to insure accuracy; Greenspun said OIA wanted a transcript "to lock somebody in to use against them later." He said: "And employees have certain rights. .... this is like a 'star chamber' proceeding where you can call somebody in, you got a court reporter sitting there, you know, they don't know where you're coming from. You can spring anything on them that they are totally unprepared for."

During the February 15 meeting, Greenspun made clear that if OIA could not cite its authority to require a recorded interview, Fortuna would be willing to proceed with the interview if it were not recorded and not under oath. The OIA interviewers insisted that the interview be sworn and recorded. Greenspun advised Fortuna to refuse and the meeting ended.

On February 15, after being informed of the events at the Fortuna interview, Thompson, according to his March 7 affidavit, requested that "OIA provide me additional briefing on the nature of the allegations being investigated before this matter proceeded further." Thompson said that on February 17, Ms. Connelly and Herr provided him "more details" on the investigation which required Fortuna's testimony. Thompson said: "The briefing further confirmed my belief that the investigation was a legitimate inquiry into a matter of significance to the NRC and should not be further delayed."

> [We are aware of nothing in the record to warrant Thompson considering to be so significant, that the investigation could not be delayed to allow Fortuna and his attorney to prepare for the OIA interview. The ongoing NRC/OIG inquiry of NRC's handling of the matter needs to determine Thompson's perceptions during the weeks in February when he was threatening to terminate Fortuna unless he agreed to answer questions under conditions set by OIA.]

On February 17, 1989, Thompson informed OI Director Ben Hayes, Fortuna's immediate supervisor, that if Fortuna wished to resign, it would be better to do it on that day (February 17), rather than after action had been taken against him, which was then projected to occur on the following Tuesday (February 21). Hayes informed Thompson that he did not believe Fortuna would resign and that the matter would probably be litigated. Thompson, according to Hayes, indicated that Greenspun "... was a criminal attorney and had very little administrative personnel knowledge."

On February 17, Mr. Hayes was informed that he would be the management official responsible for making a recommendation to Mr. Taylor regarding a possible personnel action against Mr. Fortuna.

On February 21, 1989, Mr. Stello decided that Mr. Hayes would not be the management official to recommend actions vis-a-vis Mr. Fortuna; that Mr. Thompson would make any such recommendation.

> [On December 19, 1989 Stello testified to the Senate Armed Services Committee that the basis for his decision that Hayes not be the recommending official was that he (Stello) had been advised that Hayes himself might be implicated in the wrongdoing alleged by Ellison. As far we know this was the first suggestion that Hayes was suspected of such wrongdoing; it this was indeed the case, it is noteworthy that the first indication of it was some five months after Ellison had presented his information. It is also noteworthy that, as far as we know, no investigation of Ellison inspired charges against Hayes has been initiated as of this date, 15 months after the Ellison information was obtained. We believe that the real reason for the removing Hayes from the scene was that he had insisted on access to all relevant administrative information pertaining to the administrative aspects of the case prior to his making any recommendation concerning Mr. Fortuna. When it became clear that Mr. Hayes would not make the recommendation unless he had all such information, the task was again assigned to Mr. Thompson.]

On February 21, 1989 Mr. Hayes stated that at a meeting with Messrs Hugh Thompson, Michael Fox and Dennis Dambly that he (Hayes) had stated:

> .... I am in a position now to sign an affidavit that I believe Ms. Sharon Connelly is a liar and I feel as though affidavits from members of OGC and other OI personnel could similarly be forthcoming.

On February 22, Hugh Thompson, the Deputy Executive Director to who OI reported, proposed to remove Fortuna from the federal service for his "refusing to comply with a directive of management and refusing to cooperate in an official NRC investigation." Thompson informed Fortuna that he was placed on non-duty status with pay pending a review of the record and Fortuna's response thereto by James Taylor, the Executive Director for Operations. Fortuna was informed that he would have 14 days to respond to the proposal to remove him, and that any such response would be taken into account in a final decision on disciplinary action.

> [Note. While Thompson's proposal for firing Fortuna was based solely on Fortuna's declining to appear before OIA, the Commission's February 5, 1990 response to questions from Chairman Udall demonstrated that Fortuna's not cooperating with OIA was but one of the reasons for the proposal to remove Fortuna; e.g. other reasons included the seriousness of the allegations against Fortuna, Fortuna's sensitive and high level position, the existence of tapes, and the fact that the allegations pertained directly to his ongoing duties. The February 5 response also stated erroneously that the February 1989 decision was "to remove Mr. Fortuna from his position pending final agency disposition of the allegations" when in fact the NRC proposed on February 22, 1989 to remove Fortuna from the Federal Service for his refusal to cooperate with OIA unless a review of the record showed some other action to be appropriate. (See February 5, 1990 response to Question III-C-2 and February 22, 1989 letter from Hugh Thompson to Roger Fortuna.)]

On February 23, just prior to the Energy and Environment Subcommittee's NRC authorization hearing, the Commission notified the Subcommittee of this action against Fortuna. Congressmen Markey and Gejdenson had learned of the matter beforehand and asked Chairman Zech about it at the hearing. Chairman Zech refused to discuss it on grounds that it was an ongoing personnel matter.

At the February 23 hearing, Mr. Markey asked the Commissioners whether they had confidence in Ms. Connelly's ability to conduct an objective inquiry into the matter. The Commissioners said "Yes."

On February 24, Hayes wrote a memorandum to file stating that he had discussed with Messrs James Fitzgerald and Dennis Dambly information that Hayes had received information to the effect that:

> Mr. Ellison made tape recordings and that those recordings are in the possession of NRC. That the recordings have allegations on Ms. Sharon Connelly and a Commissioner.

On February 27, the Commission stated to Chairman Sharp that:

> The Commission is confident that all of its investigations and personnel actions are being conducted in a manner consistent with current agency policies, practices, and authorities, and with protection of individual's due process rights.

[Note. On February 5, 1990, in response to questions from Chairman Udall, the Commission, counter to its February 27, 1989 assertion, stated that in significant respects OIA had not complied with current agency policies, practices and authorities in the conduct of its Fortuna inquiry. In fact, our inquiry into the NRC's handling of the Fortuna matter raises questions with regard to whether OIA followed customary investigative practices and complied with requirements of its manual and/or other NRC procedures and/or directives of the General Counsel with regard to the following:

A. Referral to the appropriate regulatory staff of technical issues raised by Ellison. [OIA Manual Page I-18.]

B. Preparation of investigation plan. [OIA Manual Page III-14.]

C. Conduct of Fortuna interview in accord with OIA Manual Guidelines. [OIA Manual Page III-15-15a.]

D. Completion of all preparatory investigative work prior to conducting interview with Fortuna. [OIA Manual Page III-16.]

E. Failure to interview Stephen Comley and/or to seek such an interview.

F. Conveying to Fortuna on November 4, 1988 appropriate warnings and information regarding his being a target of a criminal and/or administrative proceeding. [OIA Manual Page III-18-21.]

G. Preparation of interview notes required OIA manual. [OIA Manual Page III-24.]

H. Requirements pursuant to delegation of authority regarding administering of oaths. [OIA Manual Page III-26.]

I. Requirements for preserving the integrity of evidence. [OIA Manual Page III-28-31.]

J. Authority to compel recorded testimony under oath.

K. Preparation of interview reports as required by OIA Manual. [OIA Manual Page III-27.]

L. Requirements regarding consultation with the General Counsel prior to consulting with DOJ. [OIA Manual Page III-55.]

M. Procedures for establishing investigation priorities; i.e. was the Fortuna investigation assigned a proper priority in accord with the OIA manual? [OIA Manual Page III-59.]

N. Preparation of briefing papers pursuant to requirements of OIA manual. [OIA Manual Page III-60.]]

On February 27, the Commission notified the Energy and Environment Subcommittee that Ms. Connelly would no longer have responsibility for investigation of the allegations against Fortuna or other OI employees; that this responsibility was being assigned to Alan Rosenthal, a retired Chairman of the NRC Licensing Appeals Board. At that time the Commission stated:

> This decision was made with the full support of the Director of OIA [Ms. Connelly] and does not indicate any lack of confidence in her.

On February 28, at Chairman Sharp's Energy and Power NRC budget hearing, the Commission again refused to answer questions about the matter. Since the matter had surfaced in mid-February, Congressman Miller, Sharp, Gejdenson, and Markey and Senator Glenn had initiated investigations and sought information from the Commission. The Commission has agreed to make all relevant materials available to Messrs Sharp and Glenn with the proviso that the information not be made public until the Commission had resolved the matter.

The Commission was only marginally responsive to Congressmen Miller and Gejdenson. In a March 9 letter, the Commission responded to their request that the termination proceeding against Fortuna be halted pending the completion of the Rosenthal investigation. The Commission rejected this request, but did note that the 14 days allotted for Fortuna's response to the notice of proposed termination had been extended.

On March 7, the Commission announced that Ms. Connelly had asked to be reassigned from the OIA Director's job to a position in the NRC Office of the Controller. This job had not existed prior to the transfer. The position description for the new job had not been approved as of March 9, two days after public notification of the new job assignment.

On March 22, Fortuna, accompanied by Greenspun was interviewed by Alan Rosenthal who, as noted above, had replaced Ms. Connelly for the purpose of conducting the Fortuna investigation.

> [While Fortuna continued to assert that he could not be compelled to appear under oath and without legal counsel that he believed adequate, he agreed to appear before Rosenthal because he believed the circumstances had changed in three respects from the time Ms. Connelly was demanding his appearance:
>
> - Ms. Connelly demanded his appearance under conditions that would not allow adequate representation by legal counsel.
>
> - Fortuna had good reason to believe that Ms. Connelly was conducting a vendetta against him and that she would twist his statements in a manner adverse to his interests.
>
> - An important principle was involved; Fortuna believes that a compelled appearance and conditions set by OIA would violate his constitutional rights and that he, as a matter of principle, would not abide by Hugh Thompson's directive to participate in such an interview.
>
> Fortuna says that the situation changed with his suspension and Ms. Connelly's removal. He believed that it was now in his interest to respond to Ellison's allegations; that he would receive a more objective hearing from Mr. Rosenthal than he would have gotten from Ms. Connelly; and that his appearance was voluntary, not compelled, and not under oath. Fortuna recognizes that even in the absence of an oath, willful false statements would subject him to criminal penalties; but he also believed that an oath could to lead to his being subjected to harassment over unintentional discrepancies in his statements, which would not occur were his statements not under oath.]

Mr. Fortuna has stated that his answers to Mr. Rosenthal show that he has done nothing improper. In the course of the questioning, Fortuna raised the question as to whether Rosenthal was under pressure from the Commission to pin something on him. Subsequently, on October 12, 1989, Fortuna presented the following testimony as to what transpired at the March 22 interview:

> I was interviewed by Alan Rosenthal, a retired NRC administrative law judge, in March of this year regarding this matter. He had two other attorneys with him. All three cross-examined me at length. I was not advised of the nature of their inquiry prior to my investigation.

> Based on my earlier experience with this matter, I expected to be questioned about allegations raised against me by Douglas Ellison, a convicted child molester. The trio's questions however for the most part focused on what relation I had with Stephen Comley, a Massachusetts nursing home operator who has been active in nuclear matters for several years.
>
> The tenor of the investigation was hostile. It was clear that this was more than a fact-gathering mission. I was provided a copy of a transcribed tape of a conversation between myself and Mr. Comley. I was then peppered with questions for several hours. These questions clearly indicated a predetermined judgment on the part of Mr. Rosenthal and his assistants. I was questioned as to why I didn't defend my agency against Mr. Comley. I was advised that I cussed in excess, a charge that every president for the past three decades and Victor Stello is probably guilty of. I was told that by discussing an upcoming meeting that Comley was going to have at the Justice Department here in Washington I was providing a public citizen with undue advantage.
>
> I was told that admonishing Mr. Comley to be well behaved and reasonable with the Department of Justice representatives was inappropriate.
>
> Remember, however, that the Department of Justice, the party who would be aggrieved if I were acting improperly, felt I acted well within my rights.
>
> I could go on and on, but this is the nub of the matter: Rosenthal and his assistants believed that I, a member of the bar and a member of the Senior Executive Service, had conducted myself in at least an unprofessional if not a prohibited manner.

On March 24, 1989, pursuant to Mr. Rosenthal's inquiry, the NRC issued a subpoena to Mr. Comley to produce any tape recordings or transcripts of tape recordings possessed by Mr. Comley of any telephone conversations between Mr. Comley and any employee of the NRC including Mr. Fortuna. Mr. Comley's attorney responded to the subpoena on April 6, 1989, refusing to state whether or not tapes even existed.

On or about the week of March 27, 1989, Mr. Stello requested his deputy, Mr. James Taylor, to conduct an inquiry into Ellison's safety and drug allegations. After Mr. Rosenthal provided his approval and following a review of "selected records," Mr. Taylor referred the safety and drug allegations to NRC Region I. [Gejdenson Question 12.] During the course of the October 12, 1989 hearing before the Subcommittee on Oversight and General

Investigations, Stello agreed with Chairman Kostmayer that the drug allegations should have been investigated at an earlier date.

On March 29, 1989, Fortuna and Greenspun met with Taylor for the purpose of providing information that they believed would establish that Fortuna's threatened termination had no proper basis. In conjunction with this meeting, Greenspun submitted a twenty one page letter stating, among other things, that "this case does not involve misconduct by Fortuna.

On March 29, 1989, in a letter to Fortuna apparently prepared independently of the meeting with Taylor and the Greenspun letter to him, Hugh Thompson sent a letter to Fortuna stating that as of March 30, Fortuna was no longer in a non-duty status. Thompson said that, effective March 30 (later changed to April 3) Fortuna would be detailed to the Office of Administration for a period anticipated to be 60 days in length which was anticipated to be "sufficient time for this matter to be resolved." During this temporary assignment, Fortuna was directed to carry out several tasks related to NRC Freedom of Information and Privacy program.

On March 31, 1989, Mr. Jim Sniezek called Ellison, apparently in response to Ellison's attempts to reach Chairman Zech. Sniezek said he was calling to determine whether Ellison had concerns relating to the safety of currently operating plants. Ellison, according to Sniezek, "indicated that he had none."

Circa April 4, 1989, the Commission agreed to provide to Congressmen Gejdenson and Miller, without preconditions, all documents pertaining to the matter.

On April 5, Jack Anderson, in a story describing the Fortuna matter, stated:

> An NRC spokesman defended the "contractor" arrangement [with Ellison], saying it has been used in the past.

The NRC spokesman erred; this statement conveyed the impression that NRC had previously entered into contracts with informers similar to the contract with Ellison. In fact, as far as we have been able to ascertain, there was no other secret, cash contract with an informer primarily for the purpose of acquiring improperly recorded tapes from a person whose credibility with the NRC was already low, at a price approximating that which the NRC paid its highest paid consultants, and hidden from the agency's working level auditors.

On April 5, 1989, at the request of James Taylor, Sniezek again called Ellison (see March 31 entry) who, according to Sniezek, expressed concern at his inability to communicate directly with Chairman Zech's staff. Sniezek, in an April 7 memorandum documenting his April 5 conversation, stated that he say "no utility in the technical staff having any further conversations with Mr. Ellison as he is not raising any safety concerns and the technical staff has no knowledge of or background regarding activities between OI, OIA, EDO and the Chairman's direct staff to which Mr. Ellison appears to be alluding."

On April 6, 1989, Mr. Comley's attorney, Ernest C. Hadley, submitted a motion to quash the subpoena issued on March 24. Mr. Hadley stated that the motion to quash was based on the ground that the NRC had no authority to issue such a subpoena in personnel matters which it had done with regard to the subpoena in question.

On April 14, 1989, Mr. Stello wrote Senator Glenn responding to April 5 questions concerning Stello's involvement in the OIA investigation of Fortuna. Stello stated that he had taken steps to determine that he had authority to authorize the contract with Ellison, that Mr. Blaha had informed him that "there was additional information regarding new safety allegations for Nine Mile Point Unit 1," and that "The potential safety significance of these allegations, if they are substantiated is clear." Stello said:

> At the time Mr. Blaha briefed me on these new allegations, Nine Mile Point Unit 1 had been shut down since December 1987 but was projected to start up again in the fall of 1988. For that reason, I felt it was important to promptly pursue these allegations; therefore, I approved the contract.
>
> During the course of subsequent interviews with Mr. Ellison, Mr. Blaha kept me informed of additional information about safety issues. Because the projected startup date for the plant had slipped, there was no immediate need to address these issues. Mr. Blaha documented the safety issues during the interviews with Mr. Ellison with the intent that they would be pursued by the NRC before startup.

On May 1, 1989, Congressman Gejdenson sent the NRC 37 questions concerning the Fortuna matter. The Commission responsed on May 1, 1989.

On May 2, 1989, Alan Rosenthal issued a preliminary report in which Rosenthal recommended "a finding that there was no misconduct or dereliction of duty upon the part of Office of Investigations personnel, including Fortuna, in the treatment of the Ellison allegations presented to the NRC in 1986." The report did not address allegations concerning Fortuna's allegedly conspiring with Comley "to topple" the NRC or allegations that Fortuna had provided Comley confidential information. Mr. Rosenthal said "possible improprieties on Mr. Fortuna's part in his relationship with Mr. Comley will be the subject of a subsequent report."

[Note: Mr. Rosenthal did not interview Mr. Ellison. Mr. Rosenthal explained his not having done so in Footnote 39 of his report. He said:

> During our investigation, we made a deliberate decision not to interview Ellison further. This decision was prompted by the fact there is sufficient doubt as to Ellison's credibility as a witness. This was borne out through our comparison of Ellison's perceptions of conversations which he had taped and the action conversations on several of these tapes.

That Mr. Rosenthal did not consider Ellison to be a credible witness (added to the fact that OIA staff had also decided in early 1987 that Ellison was not credible) raises questions as to why Rosenthal did not fully exonerate Fortuna. Instead he continued his investigation, inquiring into Ellison's implausible allegation that Fortuna had an improper relationship with Mr. Comley (a person whose safety concerns the NRC has consistently considered to lack merit) either by revealing confidential information or conspiring to discredit the NRC.

The investigation of the purported Comley-Fortuna relationship did not begin at the logical starting point of Mr. Rosenthal seeking to interview Comley.[16] Instead Rosenthal sought tapes which Comley purportedly made of his conversations with Fortuna, and the inquiry immediately reached an impasse over Comley's refusal to respond to an NRC subpoena to turn over the tapes, whose existence Comley does not admit. Comley contended that the NRC had no authority to issue a subpoena and that the subpoena violated his First Amendment rights. Comley was issued a court order to comply with the subpoena. In response, Comley said he would choose jail rather than comply with the subpoena. Comley was ordered to pay a daily fine (initially $200 per day for five days, $500 per day for the next 10 days, and then $1000 per day) until he complies. As of August 25, 1989, Comley had paid $2500 but nothing since August 4, 1989. On September 11, 1989, Inside NRC said that Comley claimed he didn't have the assets to pay the fine, and that he could face imprisonment.] As of March 1990 Comley's fine, which had still gone unpaid was over $150,000 and still increasing at the rate of $1000 per day.

The Rosenthal report stated on page 2:

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[16] As noted above, Ms. Connelly did not seek to interview Comely during the August 1988 - February 1989 period when she was responsible for the inquiry and aware of Ellison's allegation.

> The second element of the Ellison complaint to OIA focussed principally upon two January 14, 1987 telephone conversations between Mr. Fortuna and Stephen B. Comley, which were recorded on tape by either Mr. Comley or Mr. Ellison without the knowledge of Mr. Fortuna. .... According to Mr. Ellison, in the January 14, 1987 telephone conversations Mr. Fortuna had inappropriately disclosed to Mr. Comley information pertaining to Mr. Ellison and, additionally, had discussed with Mr. Comley sensitive and confidential NRC matters.

The Rosenthal report then stated on page 4 that:

> Our conclusions respecting possible improprieties on Mr. Fortuna's part in his relationship with Mr. Comley will be the subject of a subsequent report.

Since the "possible improprieties" were those quoted above from page 2 of Mr. Rosenthal's report, it is unclear why the January 14 tapes themselves were not sufficient for the purpose of determining whether Mr. Fortuna had done something improper in his relationship with Mr. Comley. Ellison, as noted above, stated that on January 14 Fortuna had inappropriately disclosed information to Comley on January 14, some relating to Mr. Ellison and some relating to internal OI matters. Since the tapes speak for themselves, there is question as to why Mr. Rosenthal could not make his finding in his May 2 report on the second element. Instead, it appears that Mr. Rosenthal, finding nothing on the January 14 tape, expanded his investigation and went off on a fishing expedition for evidence against Fortuna that might exist on Comley's other tapes.]

On May 22, 1989 the Commission responded to Congressman Gejdenson's 37 questions. The response to certain of these questions was prepared by persons whose performance formed the basis of the question. The Commission apparently assumed the answers submitted to Congressman Gejdenson were accurate and complete although the answers to several of the questions did not meet this standard.

On May 23, 1989, Chairman Sharp sent the NRC a letter based on a report prepared by his Subcommittee staff. Among other things, the letter stated that Ms. Connelly "did not appear unbiased in this case." The letter stated that there was "ample evidence in Ms. Connelly's notes that her primary motive was to 'get' Fortuna." Ms. Connelly, according to the letter persisted in the investigation after "the Department of Justice found absolutely no wrongdoing on Mr. Fortuna's part and even noted that he [Fortuna] appeared to have acted appropriately." The letter stated that Ms. Connelly had taken the "extraordinary step" of paying Ellison $6000 after receiving a legal opinion from the General Counsel that payments to informants were probably not authorized by law. The letter noted that although the payment to Ellison had been predicated upon a finding that important health and safety issues were involved, there appeared to have been relatively little investigation of these allegations since Ellison made them in August.[17] Chairman Sharp's letter stated that Ms. Connelly's deputies, Frederick Herr and Mark Resner "apparently provided sworn affidavits in Mr. Fortuna's lawsuit against the NRC which appear to be inaccurate in several accounts."

Chairman Sharp's letter stated, in summary, that "despite a lack of credible evidence against Mr. Fortuna of wrongdoing, he has been subjected to severe costs to his career, as well as legal costs. At the same time that Mr. Fortuna has been subjected to this significant scrutiny, there has been no investigation of the questionable procedures followed in this investigation, nor has there been any significant investigation of any of the new allegations against the utility management."

Chairman Sharp requested that the Commission reconsider reinstating Fortuna as Deputy Director of the Office of Investigations.

The Subcommittee on Energy and Power staff report upon which Chairman Sharp's letter was based noted that Ms. Connelly had written in her notebook, as the first of three objectives of her investigation was a circled item "Dispose of RF."

The Subcommittee on Energy and Power staff report stated:

> Based on the documents reviewed by [Committee] staff, these sworn statements [by Herr and Resner] appear to be knowingly false in several respects.

The Energy and Power staff report said these respects related to the fact that Herr and Resner, in noting that the investigation has been conducted in the October - November 1988 period, had failed to state that the bulk of their investigation had occurred in September; that the questions prepared for Fortuna for the proposed February 1989 interview had little to do with his handling of the Ellison case and much to do with his dealings with Comley on other matters; and there was "absolutely no evidence" in any documents that there was a subsequent investigation after the November 4 Fortuna interview or that subsequent information was obtained by OIA. The report stated, with respect to the Herr and Resner affidavits, that, with respect to the proposed February 1989 OIA interview of Fortuna: "In fact, not a single question prepared for the Fortuna interview is based upon any information not provided by Ellison in September." [E&P, p. 10.]

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[17] The record indicates that, in fact, there was no investigation of the most significant charges made by Ellison; i.e. that the NRC had not dealt adequately with his original safety concerns and that Niagara Mohawk had caused the sexual harassment charges to be brought against him.

[Note: Chairman Sharp's letter and report are attached hereto.]

On June 1, 1989, Julien Greenspun, Fortuna's attorney sent a letter to the Commission requesting reinstatement of Fortuna to his position and an end to "the witch-hunt of Mr. Fortuna, which is now continuing into its eleventh month." Greenspun referenced Chairman Sharp's May 23 letter and the E&P report in support of his request. Greenspun raised questions as to the objectivity and quality of Rosenthal's investigation. Greenspun requested that, in the event the Commission were unwilling to terminate its Fortuna inquiry, the matter be turned over to the Department of Justice's Office of Professional Responsibility or to the FBI. Among Greenspun's points were the following:

- While Rosenthal had advised Greenspun that the subject of Fortuna's interrogation would focus on the Ellison allegations, the actual focus had been upon the Comley tapes.

- In the course of the Fortuna interrogation, Rosenthal used a version of the secretly recorded Comley/Fortuna conversations which included handwritten modifications of the type transcript which did not accurately reflect what was actually on the tape.

- Rosenthal was involved in drafting an NRC opinion, filed with the U.S. District Court, seeking tapes, if any, which had been recorded by Comley. This opinion accused Fortuna of violating NRC regulations, which were the "same contrived allegations of wrongdoing" which Connelly was using as a base to "dispose" of Fortuna.

- It is "deeply troubling" that the Department of Justice letter, based on Justice personnel having listened to the Comley tapes and concluding that there was no criminal or administrative wrongdoing by Fortuna, was not disclosed to the Court by the NRC.

- Rosenthal, in his interrogation of Fortuna, inquired extensively as to why, when Comley expressed distrust of the NRC, that Fortuna did not correct and challenge Comley viewpoint. This line of questioning "confirmed a seriously misguided preoccupation with challenging or disagreeing with Comley about the NRC's bad reputation ..."

- It is clear that Mr. Fortuna was called in by OIA and ordered by Mr. Thompson, for the purpose of ambushing Fortuna on the Comley tapes.

- Thompson was working closely with Stello and Thompson's directing Fortuna to testify under oath was based on an "illegal order" and was "simply another pretext to 'dispose of RF.'"

On June 22, 1989, James Taylor, NRC Deputy Executive Director for Operations, informed Fortuna that while the charges against him stemming from his declining to appear before OIA had been sustained, that the proposed termination would not be carried out in light of Fortuna's ultimate appearance before Rosenthal and in light of his having been "faced with a possible removal action for an extended period of time" and his having "served the federal government for a good many years."

Taylor also informed Fortuna that his assignment in the FOIA office would continue, apparently until such time that Rosenthal had opportunity to review Comley's tapes.

> [Note: The only basis for a belief that Comley's tapes might contain evidence of wrongdoing by Fortuna was Ellison's statements to OIA. Rosenthal never interviewed Comley because he considered him not reliable. The prolonged search for evidence against Fortuna had all the earmarks of a grasping at straws conducted with the hope that sufficient information would be obtained to demonstrate an improper act by Fortuna. Such a demonstration which would help to get NRC off the hook for having expended so much effort in what by now had all the appearances of an official vendetta carried on against an unpopular official.]

On October 12, 1989, the Interior Committee Subcommittee on General Oversight and Investigations conducted a hearing as part of its investigation of actions of Nuclear Regulatory Commission officials in their investigation of Mr. Fortuna. The Subcommittee, chaired by Representative Kostmayer, stated that the facts did not paint a favorable portrait of many of the principals involved in the NRC's action against Mr. Fortuna. Chairman Kostmayer stated:

> At best, some of those involved committed serious errors in judgment. Some may in fact be guilty of willfully misleading agency officials and Congress in an attempt to carry out a personal vendetta against Mr. Fortuna, a 13-year agency veteran who was unpopular with certain NRC officials because he was one of the agency's top officials responsible for investigating licensee wrongdoing.

Toward the end of Mr. Stello's appearance at the October 12 hearing, he and Chairman Kostmayer engaged in the following discussion.

Mr. Kostmayer:

I am finished, Mr. Stello. But I just want to say that I am disturbed that you didn't. I have been thinking about this a lot and I'm disturbed that you didn't refer these allegations until March 29. And I think there is a reason that you didn't do it. I don't think it is because you have a cavalier attitude toward important safety issues. I don't think you do. I think you share my concern with drug use and health and safety allegations. I don't think that is why you didn't refer them. I'm not suggesting that. I think you didn't refer them because you didn't think there was anything to them. I don't think_I don't think you thought they were substantive. I think you used them as an excuse, as a pretext to cover yourself and to justify the payment. You needed a reason to justify the $6,000 payment to get Mr. Fortuna_what I think and what Senator Glenn thinks and what Congressman Sharp thinks was a vendetta. You needed to justify that. And Ms. Connelly came to you and indicated that there might be something on these tapes that Mr. Ellison had or something he had, somehow some way that would finally get Fortuna.

You okayed the payment and you listened to the tapes or your associates listened to tapes. You never heard them_I don't know_up to the 16th of September, out in the suburbs, and you figured out, ``We have got a problem. There is nothing here. Mr. Ellison doesn't have anything. He doesn't have anything in terms of safety and nothing in terms of Roger Fortuna. But we okayed this payment back earlier in the month and we have to justify it.''

You justified it by saying you did it for safety. But you knew safety wasn't an issue, so you never really pursued these allegations. That is what I think is happening.

Mr. Stello:

I have to respectfully disagree. You are so wrong. These were safety issues for which I don't think you disagree, or at least I haven't heard you disagree, needed to be pursued.

Mr. Kostmayer: I agree.

Mr. Stello:

It turned out that these safety allegations were in fact not true; they still needed to be pursued.

Mr. Kostmayer: I agree.

Mr. Stello:

> They must be pursued. Everything that I knew of regarding Mr. Ellison and the information he had caused me to come to no other conclusion except that these allegations were likely to be correct. He did so in the past. The documents and the information he had as described to me by Mr. Blaha caused me to reach no other conclusion than that these allegations would turn out to be substantiated. I did not believe they needed to be pursued faster than I did because the plant was shut down and I felt comfortable they could be disposed of prior to restart, and I did not want to be in the untenable position of interfering with an ongoing investigation. And that, sir, is exactly why I did what I did. I stand by what I did and accept full responsibility for it.

Mr. Kostmayer:

> Well, the record doesn't support that, and the facts don't support it. It seems to me in terms of when the plant was going to restart you believed what suited your purposes. You believed on September 1 that it was going to restart even though the evidence flies in the face of that.
>
> Subsequent to that, when it was no longer in your interest to pursue this matter, having signed the contract for the $6,000 payment, you rather suddenly acknowledged what all of us acknowledged, that startup is not imminent and has in fact not occurred.
>
> You believed what it suited you to believe and nothing else, and you used these safety allegations as an excuse to justify the payment to get Mr. Fortuna and didn't pursue the safety allegations. You made that clear, and that is what the record supports and that is what the record shows. And poor Mr. Fortuna, who tried to do his job and who is $60 thousand poorer because of it, that is what is wrong. And I hope that situation is corrected. Thank you very much, Mr. Stello. [60-62/163-166]

On October 18, 1989, Judge Rosenthal wrote a memorandum to the Commission based on a New York Times story relating to the October 12 hearing. In that story, Matthew Wald wrote that in an interview, Fortuna had said: Mr. Comley had provided important safety information and that he was cultivating the man as a source." In his memorandum Rosenthal said:

> The Wald article does not clearly state whether Mr. Fortuna was asserting that the "important safety information" was provided to him or, rather, to someone else within the agency.

> Insofar as I am aware, however, Mr. Comley has never supplied anyone within the agency with new information found to be of possible safety significance.
>
> ....
>
> During the course of my investigation, no person (Mr. Fortuna included) has averred that Mr. Comley has given the Commission worthwhile information and, once again, it appears that the claim to that effect contained in his organization's press release is not accurate.
>
> > [Note. The foregoing assertions, implying that Rosenthal was not aware of Comley having provided important safety information conflicts with the NRC's (and Rosenthal's) statements in support of the subpoena for the Comley tapes; i.e.:
> >
> > > In this case, the evidence developed during this investigation provides sufficient reason for the NRC to inquire further into the possibility that the NRC employee in question [Fortuna] received information relating to potential violations of NRC regulations and did not pass that information to the appropriate officials of NRR. [See p. 6, April 17, 1989 Commission Order rejecting the Comley motion to quash the March 24, 1989 subpoena. See also following discussion pursuant to Chairman Kostmayer's December 12 letter to Chairman Carr and Judge Rosenthal's December 14 memorandum response addressed to Chairman Carr.]

On November 7, 1989, Mr. J. Brian Hyland submitted a report on his review of certain materials relating to the allegations against Fortuna. Mr. Hyland, a former FBI agent and Inspector General at the Department of Labor, had been asked to review the transcript of the January 14, 1989 Fortuna-Comley conversation and Judge Rosenthal's interim report. The latter had been submitted to the Commission in September 1989, but as of December 1989 had not been released to the public. Mr. Hyland had been a Special Agent and Inspector with the FBI and, from 1983 to 1989, Inspector General for the U.S. Department of Labor. Mr. Hyland's review sought to determine whether Mr. Fortuna had violated any federal law, whether he had complied with generally accepted investigative practices, and whether he had complied with standards of conduct applicable to an official in the Senior Executive Service.

Mr. Hyland said:

> It is my view that the charges against Mr. Fortuna were blown out of proportion because of the personal and organizational

> animosity that existed between the Office of Investigations and the Office of Auditor and Inspector (sic).

With respect to the allegations of criminal misconduct Mr. Hyland founds:

> The charges of criminal misconduct could have been resolved after a review of the transcribed tape recording of the conversation between Fortuna and Comley. There is simply no evidence to support the charges of Mr. Ellison.

With regard to the other charges, Mr. Hyland concluded that there were "instances in which Mr. Fortuna did not always adhere to the best practices of an investigative agency." Mr. Hyland said there were other situations in which Fortuna "may have exercised questionable judgement in his relations with Steven (sic) Comley." "This," Hyland said, "should not be surprising due to the intense scrutiny to which his [Fortuna's] actions were subjected." Hyland said that certain questions with regard to whether Fortuna had complied with standards applicable to an NRC official in the Senior Executive Services were matters to be resolved by the "deciding official." The latter according to Mr. Hyland was Mr. Fortuna's supervisor.

The Hyland review was submitted to the Acting Inspector General on November 7, 1989, to the Commission on November 17 and it was provided to the Congress on November 30.

On December 1, 1989, Christine Kohl, Chairman and Chief Administrative Judge of the NRC Atomic Safety and Licensing Appeal Panel issued a decision in response to Fortuna's June 27, 1989 grievance protesting actions taken in response to his refusal to submit to an OIA interview under conditions stipulated by OIA. In his grievance, Fortuna argued that the reprimand he received was improper and was "part and parcel of prohibited personnel practices, and should be withdrawn or expunged."

Judge Kohl, found:

> In the totality of these circumstances, the charge of misconduct against Fortuna is not justified. Accordingly, the grievance is upheld, the charge of misconduct is dismissed, and the 18-month letter of reprimand in to be expunged from Fortuna's Official Personnel Folder.

Judge Kohl's decision was based on her finding that OIA had failed to follow its own set procedures. She stated:

> .... it is only fitting to hold OIA -- the office that was responsible for investigating and auditing other NRC offices and programs -- strictly accountable for following the very policies and procedures it freely adopted.

Judge Kohl stated that OIA's "hard-line approach," wherein the OIA investigators proceeded in a manner contrary to OIA's policy and practice by insisting that Fortuna be questioned under oath, caused the OIA investigators themselves to become "active contributors to delay in the investigation, unfortunately raising doubts, well-founded or not, about their own motives."

On December 4, 1989, Thompson advised Fortuna that his detail away from the Office of Investigations would not be discontinued at that time.

On December 5, 1989, Greenspun wrote to the NRC requesting that Fortuna be reinstated to his position as Deputy Director of the Office of Investigations.

On December 12, 1989, Chairman Kostmayer wrote the NRC requesting an explanation of an apparent contradiction in Judge Rosenthal's statements on the matter of whether Comley had ever given the NRC worthwhile information. On the one hand, Rosenthal sought enforcement of the subpoenaing of the purported Comley tapes on the ground that the information available to him [Rosenthal] had led him "to conclude" that Fortuna "may have disclosed sensitive and confidential information NRC information to Mr. Comley and may have failed to disclose to other NRC officials relevant information that he had received from Mr. Comley." On the other hand, on October 18, 1989, in addressing the October 13, New York Times article stating that Fortuna had said the Comley had provided important safety information to the NRC, Rosenthal had stated that "During the course of my investigation, no person (Mr. Fortuna included) has averred that Mr. Comley has given the Commission worthwhile information ..."

On December 14, 1989, in reference to Chairman Kostmayer's December 12 letter, Judge Rosenthal stated that the "purported conflict between my June 19 affidavit and the October 18 memorandum (which did not even mention any recorded telephone conversation) simply does not exist." Rosenthal's denial of inconsistencies in his statements appears based on his claim that the "no person (Mr. Fortuna included) has averred" statement in his October 18 memorandum excluded the January 14, 1987 conversation which was the basis for what he said in his June 19 affidavit.

On December 22, 1989, Taylor wrote Greenspun rejecting Greenspun's request on grounds that Rosenthal's investigation of charges against Fortuna continued.

On December 22, 1989, the same date that Taylor informed Greenspun that Rosenthal's investigation continued, Chairman Carr informed David Williams, the new NRC Inspector General, that Rosenthal's contract would expire at the end of December, that no matters were pending before Rosenthal "except for further exploration of the relationship between Mr. Stephen Comley and Mr. Roger Fortuna if Mr. Comley honor the subpoena tecum outstanding against him for tapes of any conversations between the two individuals." [Underline added.] In his December 22 letter, Chairman Carr requested Mr. Williams to assume responsibility for further action on the matter.

> [Note. In the foregoing statement Chairman Carr appears to indicate that the Commission has doubt as to whether it will eventually receive the purported Comley tapes. The expression of such doubt raises the question as to why, if the Commission believed the purported tapes were sufficiently important to warrant an unusual subpoena to obtain them, the Commission, by apparent acceptance of Comley's failure to abide by a court order, now appeared to admit that after all obtaining the tapes was not so important.]

On December 26, 1989, Mr. Thompson requested Mr. Hayes to review various materials concerning the Fortuna matter for purposes including making "recommendations with respect to Mr. Fortuna's conduct."

On January 2, 1990, Greenspun protested Taylor's December 22 rejection of the December 5 request for reinstatement. Greenspun stated that the continuing detail away from OI was acting in a manner of "continuing the charade and creating a record to make third persons believe there was some justification for all that has transpired before it."

On January 19, 1990, Mr. Hayes recommended to Mr. Thompson that Mr. Fortuna be reinstated to his position as Deputy Director of OI.

On January 26, 1990, Mr. Hayes requested Mr. Parler, in his capacity as Designated Agency Ethics Official, to examine the Fortuna matter and to provide Mr. Hayes his (Mr. Fortuna's) views regarding whether Mr. Fortuna violated the NRC's rules of conduct.

On February 1, 1990, in response to Mr. Hayes' January 26 request, Mr. Parler sent Mr. Hayes a memorandum stating, among other things, that Mr. Parler agreed with Judge Rosenthal's conclusion that:

> There is insufficient evidence in the existing record to mandate a finding that Mr. Fortuna in fact violated any NRC regulation.

On February 5, in response to questions sent to the NRC by Chairman Udall on January 18, the Commission provided information concerning the Fortuna inquiry:

> The Commision stated that in significant respects the OIA investigation had not been conducted in accord with the procedures that governed OIA operations. [Response to Question III-A.]

2

In response to questions concerning the Commission's policies with regard to the acquisition and use of secretly recorded telephone conversations, the Commission stated that it had no formal policies and each case would be dealt with on its own merits. [Response to Question III-B-1.]

The Commission stated it had not policy that specifically addressed the circumstances that would lead to authorization of secret recordings of telephone conversations. [Response to Question III-B-2.]

The Commission stated that the Office of the General Counsel had concluded that Ellison's recordings had not been made in a manner that violated Federal law. No determination was made with respect to violations of State laws. The Commission noted a GAO report which concluded that the Ellison tapes could be used in administrative proceedings. [Response to Question III-B-4.]

The Commission explained [Response to Question III-B-5] each Commissioner's recollection as to when he had learned that the NRC had acquired tapes of conversations with some parties to the conversation unaware of such recording:

> Chairman Carr did not recall being informed of the tapes prior to February 10, 1989.
>
> Commission Rogers said he was aware on August 18,1988 that tapes relating to conversations between Ellison and Fortuna were being sought, he did not learn until February 1989 that the conversations may have been recorded by one party without informing the other.
>
> Commissioner Roberts said he had not learned of the secretly recorded tapes prior to February 23, 1989, and it may hhave been later than that date.
>
> Commissioner Curtiss said that in the November/December 1988 timeframe, he had become aware of the Fortuna investigation and that this investigation involved tape recordings. He said he was not aware at that time that the tapes had been secretly recorded, a fact he became aware of it in late winter or early spring 1989.

The Commission provided the rationale for the decision to remove Fortuna from his position pending final agency disposition of the allegations against him. [Response to Question III-C-2, see also p. 43.]

On February 20, 1990, Fortuna was reinstated to his position of Deputy Director of the Office of Investigations.

Senator **McCain**. Thank you, Mr. Chairman, thank you very much, Congressman. I do not know, Mr. Chairman, how long you plan on having these hearings, but if it is true, as I have been told, that the minority is in disagreement on his subcommittee, we might want to hear from them, too.

Senator **Bingaman**. I think that is an excellent suggestion. Are there other questions? Senator Kennedy.

Senator **Kennedy**. May I ask, Congressman, is it the normal task of the NRC Executive Director of Operations to be involved in these kinds of independent investigations by the Inspector's Office? Does that not compromise the independence of the investigations?

Mr. **Kostmayer**. I think it is highly unusual. I was reluctant to get into any more detail because it seemed so confusing as it is.

Apparently, there is more involvement of a woman named Mrs. Connelly, I think, whom Mr. Fortuna had testified against in an earlier unrelated matter. I do not know the real nature, I do not know the real explanation as to why Mr. Stello was out to get Mr. Fortuna. If Mr. Stello regarded Mr. Fortuna as a little overexuberant and overenthusiastic in his responsibilities—and indeed, there had been some disputes in the agency that perhaps Mr. Fortuna had been too tough on the nuclear industry.

Senator **Kennedy**. Did Mr. Stello advise the general counsel of the NRC as to the nature of the investigation before approving the payment?

Mr. **Kostmayer**. I think in fairness to Mr. Stello, he went to the general counsel, a man called Mr. Parler, and told Mr. Parler exactly what he wanted to do. Mr. Parler apparently did not object very strenuously. He did not, however, tell Mr. Parler nor did Mr. Parler ask who the subject of the investigation was. There was no indication.

I called Mr. Parler on the telephone, and I said, well, did you not ask? It seems routine that you would ask Mr. Stello exactly who he was investigating, who the information was about. Mr. Parler said, well, in hindsight I should have asked him. I said, well, what if he had told you that it was Mr. Fortuna, and then Mr. Parler said I would have told him this is a terrible idea, that it was well known in the NRC that there was very bad blood between Mr. Stello and Mr. Fortuna, and the idea of this kind of investigation was a very bad idea. But in fact, Mr. Parler did not ask that question, and Mr. Stello did not volunteer the information.

Senator **Bingaman**. Senator Wirth, did you have any questions for Congressman Kostmayer?

Senator **Wirth**. Yes. Congressman Kostmayer, thank you very much for coming over. First, can you tell us why the Fortuna affair and the $6,000 payment is important?

Mr. **Kostmayer**. Well, I think that the explanation that Mr. Stello gives for making the $6,000 payment is to get to the bottom of these very serious drug, health, and safety allegations which Mr. Ellison, the man who was a recipient of the $6,000, had made.

That is not the case. The real reason—that was a cover, an excuse, a justification. The reason that they made a $6,000 payment was because Ellison wanted to sell them the information, and he told them, "I have got some stuff on these tapes on Fortuna."

He knew that they were after Fortuna. He knew that if he wanted to get them to buy the tapes that he could say I have stuff on Fortuna, and that is what they did and they went for it. That is what they were really after. They were really after Fortuna, and that, I think, is the reason they then did not even pursue the safety and health allegation.

Senator WIRTH. "They" being?

Mr. KOSTMAYER. Mr. Stello and Ms. Connelly and others in top leadership of the Nuclear Regulatory Commission.

Senator WIRTH. And why is that information important to the deliberations of this committee now?

Mr. KOSTMAYER. Well, I think first of all, Mr. Fortuna—it is only my opinion—was probably doing his job and doing it in the way in which we would want all public officials to do it. I think for him to be hounded in this vindictive manner for this extraordinary payment to be approved by Mr. Stello is very, very bad practice, and then once they had the safety and health allegations and the drug allegations not to be pursued.

This very same facility had been fined $60,000 some years earlier because there were employees who were using drugs, and it simply was not followed up for 8 months. And Mr. Stello has acknowledged now that that was a very serious oversight and mistake on his part.

Senator WIRTH. And that from your perspective having had testimony on the Fortuna situation leads you to believe that the purposes of this committee——

Mr. KOSTMAYER. It leads me to believe sadly, Mr. Wirth, that Mr. Stello should not be in this kind of position of responsibility where he holds a terribly important position which has a great deal to do with the safety and health of the American people.

Senator WIRTH. Why?

Mr. KOSTMAYER. Because he failed to investigate the most serious allegations made against a nuclear utility which had been fined for the very same problems earlier because he failed to follow up and sat on those problems for 8 months and did nothing at all about them because his real interest was in handcuffing an exuberant employee who was doing his job.

Senator WIRTH. Finally, let me ask you this. Yesterday I read from your letter to Senator Nunn of November 13. In that letter, on page 5, you say, "when I looked at it in toto, I believe the only conclusion that can be reached is that Mr. Stello ignored public safety and health while pursuing a vendetta which has proved costly to both Mr. Fortuna and the Federal Government." You go on to say, "what is more, to the extent that Mr. Stello tried to couch his actions as being consistent with a concern for health and safety, I believe he has willfully misled my subcommittee as well as other committees of this Congress."

Mr. KOSTMAYER. Well, it is my own judgment that Mr. Stello was interested in getting Mr. Fortuna, saw the opportunity to do so when this informant provided this information, made this $6,000 cash payment on that basis and when provided additional information regarding health, safety, and drugs did not pursue it. Not a bad business.

Senator WIRTH. And how did he mislead?

Mr. **Kostmayer.** I think he misled the subcommittee by telling them that the reason that he made the $6,000 payment was because this plant was about to open up and he needed desperately to get this information, to investigate it, and he said to me and he said to others, "I would a lot rather be the subject of criticism for the $6,000 payment than for failing to investigate these kinds of safety and health allegations."

Once the payment was made, they discovered in the series of interviews with Mr. Fortuna in subsequent weeks that they really had nothing on Mr. Fortuna. It turned out there was really nothing on these tapes. Mr. Fortuna, incidentally, has been virtually cleared.

In the meantime they said to themselves, "we paid these guys $6,000 to get this information. They did not give us what we thought we were going to get. Now we have to justify the payment." They did it on the basis of the safety and health allegations which they did not pursue which they should have. Incidentally, some of these very same safety and health allegations have turned out to be valid.

Senator **Wirth.** Mr. Kostmayer, thank you very much for coming over. We really appreciate it. I too join you. I take no joy in this whatsoever. It is very difficult, but I think we have a responsibility to try to ask questions, understand what the documents say, and what the hearing record says. I appreciate your coming over to share your thoughts with us. Thank you very much.

Mr. **Kostmayer.** Thank you, Senator.

Senator **Levin** [presiding]. Congressman Kostmayer, thank you for coming.

Mr. **Kostmayer.** Thank you, Senator, very much.

Senator **Levin.** We are going to recall our previous witnesses here, Mr. Pollard, Mr. Fersht, and Mr. Backus. Senator Wirth.

Senator **Wirth.** Thank you, Mr. Chairman. First, before getting to the panel, I had a procedural question. You just used the words "call the witnessess." Did the committee reach out and call a number of witnesses to come in and testify on this issue?

Mr. **Punaro.** Mr. Chairman, under guidance from the chairman and ranking member, the staff called the individuals that had contacted the committee either verbally or in writing about the possibility of testifying and offered all those individuals the opportunity to testify except for the one that we reported on earlier, who is under subpoena from the Federal court system. In addition, we contacted individuals whose names were suggested to us by other individuals and/or groups, and we inquired of them as to whether or not they wished to testify. Those individuals that responded in the affirmative were invited to testify.

Senator **Wirth.** We did not ask anybody to come and testify. In fact, what we responded to were requests effectively from people to come in and testify. Is that correct? I just want to get a sense of how this happened.

Mr. **Punaro.** Not exactly. We called individuals who had not contacted us but whose names were given to us by third parties to inquire as to whether or not——

Senator **Wirth.** We did not ask people specifically to come in and testify. We said if you would like to come in and testify, you can.

Mr. **Punaro**. We did not order anyone to come in and testify. We granted requests of individuals, that is correct.

Senator **Wirth**. I just make that point, Mr. Chairman. There is a distinction here. We have people who have volunteered to come in and testify. I appreciate that, but in terms of carefully examining people who are going to be on the other side of what these people have said, we have not done that. We have responded to requests rather than, as I understand, of reaching out and saying would you come and be on this panel.

I am not raising this in a critical way at all. I am just pointing out that procedurally this is different than when one normally does, I think, an investigatory approach. What you try to do is to get a variety of different views, and you really target various witnesses. We have not done that. I am not saying that critically. I am simply talking about where we are in this matter procedurally.

Senator **Levin**. I raised a similar question yesterday, Senator Wirth. I understand that there is going to be a meeting tomorrow to discuss this.

Senator **Wirth**. I just wanted to make that point for the record right now.

Senator **Levin**. I think we should call on Mr. Punaro to tell us about tomorrow's meeting and give us an update.

Mr. **Punaro**. Senator Wirth, the chairman has announced a committee executive session tomorrow at noon to discuss certain pending nominations. There are a number of them that we have that we have to discuss in addition to Mr. Stello's at which time the committee will discuss how to proceed at this point on those nominations, including the Stello nomination. I know that a number of people have raised these issues with the chairman and with Senator Warner, and they would like to get the committee's guidance and direction on these issues as to how to proceed from this point on.

Senator **Wirth**. If I could just ask one. We have Mr. Pollard here. There is a long document, a question and answer interview with Mr. Pollard by the Union of Concerned Scientists. Is this a public document? I do not know. Mr. Pollard, this is a public document, is that correct?

Mr. **Pollard**. Yes, sir.

Senator **Wirth**. There are a number of allegations in here that Mr. Pollard brought up in the interview with the Union of Concerned Scientists. Is each one of these covered in the book of 14 allegations that was referred to yesterday by the Secretary and by Mr. Stello?

Senator **Levin**. Who are you asking that question of?

Senator **Wirth**. I do not know. I am just trying to get a sense of where we are with Mr. Pollard's testimony procedurally.

Senator **Levin**. Let me ask Mr. Punaro that. I do not know.

Mr. **Punaro**. Mr. Pollard has given a summary of his testimony.

Senator **Wirth**. We have here the August 30 interview with Robert Pollard.

Mr. **Pollard**. That was not my testimony, Senator.

Senator **Wirth**. I know that. We had a long interview with you, Mr. Pollard, citing a number of instances where you have trouble with the way in which Mr. Stello carried out his responsibilities, right? I am not asking you this question. There are a number of allegations that you make in here. I gather from reading through a number of examples of where you think Mr. Stello was perhaps—I would use the word delinquent—in his responsibilities. There are a number of those in here, is that correct?

Mr. **Pollard**. That is correct.

Senator **Wirth**. We were told yesterday that there were 14 allegations that had been made, and we were all given this book the night before last which answered all of the problems. Are all of the problems that Mr. Pollard has raised included in those 14 for which we have answers from Mr. Stello?

Mr. **Punaro**. Senator Wirth, Mr. Pollard has not testified as to these allegations. We have not at the staff level compared the documents you have against the document that Mr. Stello provided. That document you have is informational in nature and is not at this point a part of these proceedings.

Senator **Wirth**. Have you all reviewed this from Mr. Pollard who appears to be an important person in this?

Mr. **Punaro**. Yes, sir.

Senator **Wirth**. And how does this——

Mr. **Punaro**. We have not had an opportunity to compare it. We were waiting to see whether Mr. Pollard was going to testify on any of that material, and he has not at this point in the proceedings.

Senator **Wirth**. Well, there is further information here. The point I am making, Mr. Chairman—and I am just trying to give Mr. Stello a fair break as well—is that yesterday there was a lot of information that Mr. Stello heard for the first time. It was being laid out. I gave Mr. Stello a copy of a letter he had not seen before. There was information that we requested from the Department of Justice that we have not received. I do not know if he has had a chance to look at this and the allegations. It is only fair to him as somebody who, as we have said, is laid out here in the lights, to make sure that this information is available and that he can answer it all.

Senator **Levin**. Let me try to bring some order back here because we have to ask questions of witnesses now, and Mr. Stello is sitting here and I think if you want or if you do not, I will. I will ask Mr. Stello whether he has seen that document and whether his 14——

Senator **Wirth**. I am trying to establish that there is a lot of information here, Mr. Chairman, and what this is, we have Mr. Pollard here and what the approach is that we are pursuing——

Senator **Levin**. Well, we could ask the staff, if you would like to take a look at the Stello material or to cross-check it against the Pollard statement that you made reference to.

Senator **Wirth**. If we could do that, we will have an opportunity.

Senator **McCain**. Could I have a point of order or parliamentary inquiry as to whose turn it is to ask questions? We have been going on this now about 15 minutes.

Senator **Wirth**. I do not think that is the case, but I would be happy to do it on another round. I am not trying to be objectionist. I am just trying to give Mr. Stello a chance to make sure all the information is available. My apologies. If there is any transgression on your time, please go ahead by all means. I am sure we will have time for a second round.

Senator **Levin**. Senator Wirth, please proceed.

Senator **Wirth**. Would you make this part of your testimony, Mr. Pollard, so that it can be analyzed, the August 30 memorandum?

Mr. **Pollard**. Well, I do not see any reason why not, Senator, but what I tried to do in my written statement which I presented here today was to focus within the time available on the facts surrounding the allegation.

One of the problems with that interview is, of course, I do not provide a lot of the support for the statements I make. With respect to your specific question, I know of at least one item in that interview which is not covered either in my testimony or in Mr. Stello's material which he submitted at least from reading the index which I have already been questioned on a little bit—I forgot by who now. I think the person is gone.

But with respect to the occasion when Mr. Stello tried to get me to change a safety evaluation—and I think I have answered that question—but that is not in as far as I know.

Senator **Wirth**. But you would add this to your testimony?

Mr. **Pollard**. I have no objection if this is of value to you.

[Information referred to follows:]

UNION OF CONCERNED SCIENTISTS

AUGUST 30, 1989.

Interview with Robert Pollard, nuclear safety engineer, Union of Concerned Scientists, 1616 P St., NW, Suite 310, Washington, DC 20036, (202) 332-0900

Subject: Nomination of Victor Stello to the position of Assistant Secretary for Defense Programs in the Department of Energy, with oversight over the nation's nuclear weapons production facilities

Question. How long were you in Admiral Rickover's nuclear navy?

Answer. For six years.

Question. What was your area of expertise?

Answer. I was an instructor first and then in charge of the reactor control division of a nuclear submarine. We were basically in charge of all the instrumentation that was used to operate and control the reactor.

Question. And you went to the NRC in 1969?

Answer. Yes, but at that time it was called the Atomic Energy Commission. It became the Nuclear Regulatory Commission in early 1975.

Question. Can you summarize your NRC career?

Answer. As a reactor engineer, I reviewed the designs of plant protection systems to determine whether they met the Atomic Energy Commission's regulations. Later I was promoted to the position called project manager, in charge of supervising the safety reviews of nuclear power plants. At the time I resigned in February 1976, I was in charge of the licensing for seven nuclear power plants.

Question. Why did you leave the NRC?

Answer. I left the NRC because I became convinced that the agency was systematically avoiding its responsibility to protect the public. When there was a conflict between protecting the public and avoiding imposing costs on the nuclear industry, too frequently the agency opted to protect the industry rather than the public.

Question. Was Victor Stello with the NRC while you were there?

Answer. Yes, Victor Stello was at the agency while it was the Atomic Energy Commission as well. At one point, when he was the director of the division of reactor safety, he was actually one of my supervisors.

Question. How would you characterize Mr. Stello's attitude toward nuclear safety?

Answer. Primarily his attitude was one of being interested in resolving safety problems, only if one, it would not delay the issuing of a license or permit or amendment that the utilities wanted; two, it would not raise questions about plants that had already been licensed; and three, it would not cause a substantial increase in financial costs.

For example, Mr. Stello was one of the recipients of the 1972 memo from Stephen Haneuer, the top technical person on the AEC staff, recommending that we not allow any more pressure suppression containments to be built of any type because of their preponderant safety disadvantages. (These include the Mark I containments on 24 U.S. plants later cited by the NRC as having a 90 percent chance of failing in the event of a severe accident, thus resulting in a large release of radiation.) When UCS filed a Freedom of Information Act request, the NRC claimed that Victor Stello had never responded to that recommendation, although given his responsibility for such plants, he certainly should have.

Question. How did Mr. Stello treat his staff?

Answer. It was clear that the best way to please Mr. Stello was to never find any problems. People who approved everything that came across their desks never heard arguments from Mr. Stello. However, anyone who raised safety questions or pointed out violations of safety requirements was almost certain to be the target of Mr. Stello's anger. Although supervisors should be expected to review work performed under their direction, the situation under Mr. Stello was that the staff was never challenged about the validity of a safety evaluation approving a design and was always challenged when the conclusion was that the safety requirements were not being met.

I can give you one personal example. I wrote a safety evaluation for the standardized design for the General Electric Mark III plants. On my final version my immediate supervisor sent a note back saying, "Bob, keep telling it like it is, but I don't think this will ever be published." And in fact it wasn't published because Mr. Stello contributed to the censorship of that report. When I complained that the version given to the public was not what I had written, Mr. Stello and others tried to make me agree to their version. However, I refused to change my conclusion that the level of information available was totally inadequate to meet the NRC's public policy regarding the approval of a standardized design.

Question. Can you cite an instance of Mr. Stello's coziness with the nuclear industry?

Answer. It begins very early. The first instance that I recall was in the Vermont Yankee case, about 1972. After the Union of Concerned Scientists had participated in a rulemaking proceeding, the AEC had to change the criteria for emergency core cooling systems. Victor Stello at that time testified before the NRC hearing board that he knew that Vermont Yankee did not meet the new emergency core cooling criteria, but that, nevertheless, he thought they ought to be allowed to operate. Now in that particular instance, Mr. Stello did not get away with his proposed course of action, because it would have been illegal, which the NRC hearing board recognized. They pointed out that the regulations constitute the law, and that while the public cannot ask for more than the regulations require, neither can the AEC nor NRC require less. But Mr. Stello, knowing that the plant did not meet the safety requirements, nevertheless argued that the plant should be licensed. Had there been no public hearing, it is almost certain that Mr. Stello would have prevailed.

Question. Are there other examples where you feel that he exceeded bounds of safety regulations in terms of easing the path for the industry?

Answer. More than five years after a nearly disastrous fire at TVA's Brown's Ferry nuclear plant in March 1975, the NRC finally adopted new fire protection regulations. During the NRC's rulemaking proceeding, representatives of the nuclear industry had tried to convince the NRC that the fire protection regulations were unnecessarily burdensome. Having failed on the technical merits of their arguments, a number of utilities brought suit against the NRC. Once again they lost. The court upheld the NRC's fire protection regulations on both substantive and procedural grounds.

Having failed on both technical and legal grounds to avoid compliance with the fire protection requirements, the utilities turned to Mr. Stello, who was then the NRC's Deputy Executive Director for Operations. Mr. Stello essentially instructed an NRC attorney to prepare an "interpretation" of the NRC regulations that would satisfy the utilities. The meetings between Mr. Stello and the utilities were not public and even the NRC's own fire protection engineers were excluded.

The NRC's fire protection engineers protested that the new interpretation made it impossible for them to do their job. The NRC attorney who had successfully defended the lawsuit challenging the fire protection regulations concluded that "to now interpret Appendix R [the fire protection regulations] so as to not incorporate a fundamental lesson learned at Browns Ferry would appear to contradict the Commission's intent in promulgating Appendix R." Nevertheless, the new "interpretation" of the fire protection regulations ordered by Mr. Stello was issued in 1985, without being offered for public notice and comment, thus giving the nuclear industry the relief it was unable to obtain by any other means.

The Seabrook case is another example. The Federal Emergency Management Agency witness had testified that the emergency plans for Seabrook were not acceptable because they did not meet the criteria for adequate evacuation. Mr. Stello said that there would be "total war" between the NRC and FEMA unless that testimony was changed. He subsequently met with FEMA officials and FEMA's testimony was changed.

Another example occurred after the Three Mile Island accident. The NRC commissioners had directed the Office of Inspection and Enforcement, which Mr. Stello then headed, to review the record of the trial where the owner of Three Mile Island had sued Babcock and Wilcox, the designer of the reactor, to determine whether any information had come out during that trial which the NRC ought to consider in deciding whether to let the other undamaged Three Mile Island reactor resume operation. When Mr. Stello completed his review, he told the commissioners in his report that there was no information of any relevance. Because that was so obviously not the case, enough pressure was brought on the commissioners to order another group to review the trial record.

This NRC group found six or seven items which they thought were significant, including one where there was evidence that the Three Mile Island operators had in fact been falsifying measurements of leakage from the reactors. If this data had not been falsified the reactor would not have been allowed to run. And in fact, the leakage which was occurring contributed to the severity of the TMI accident because the operators had become accustomed to that leakage and therefore payed no attention to the abnormally high temperature on the relief valve which stuck open. But despite all this, Mr. Stello had concluded that there was nothing of relevance in the trial record.

Question. Can you cite instances in which Mr. Stello blocked safety moves by the NRC staff?

Answer. Two people on the NRC staff, Harold Denton and Robert Bernero, were strongly urging the NRC commissioners to impose additional requirements on the General Electric plants with Mark I containments—the same containments I mentioned earlier. Mr. Stello literally blocked the efforts of these two men, even though there was no technical dispute as to the merits of their arguments. Both of these men were then transferred to other positions where they have no direct responsibility or capability to continue to pursue their beliefs that additional safety measures are needed on the Mark I reactor containment structures. Regarding these containments, an NRC study released earlier this year concluded that not only would the containment be likely to fail but that there is a high likelihood of between one and several thousand fatalities in the nearby communities.

Question. What about Mr. Stello's involvement with the Zimmer plant?

Answer. At the Zimmer plant, the NRC inspectors were reporting violations of safety requirements. Mr. Stello continuously characterized those violations as simply paper problems, not hardware problems. Eventually, of course, the Zimmer plant had to be cancelled because there were in fact so many hardware problems that it would have cost more to correct them than it had cost so far to build the plant (which at that point was about 95 percent complete).

Question. Deputy Energy Secretary Henson Moore has characterized Mr. Stello's detractors as "anti-nuclear." Would you comment on that?

Answer. Mr. Stello's detractors are primarily people concerned about enforcing the safety requirements for nuclear power plants. The people who have raised concerns about Mr. Stello's past conduct have been officials from the Department of Justice, past and current members of the NRC staff, NRC commissioners, committees of Congress, and individual members of Congress, both in the House and Senate. It's hard to believe that you could label all those people as anti-nuclear.

Question. Why should the Senate reject this nomination?

Answer. It is a rare occasion indeed when the public record of a nominee's past conduct discloses characteristics antithetical to virtually every attribute which would be desirable in the position to be filled.

Mr. Stello is unfit for this position because his whole career is characterized by an effort to avoid compliance with safety requirements when they would interfere with the operation of the reactors. Admiral Watkins has said that he now wants the Department of Energy to put safety ahead of production at the nation's weapons production facilities. This is exactly the opposite of how Mr. Stello has conducted his entire 20 year career at the Atomic Energy Commission and the NRC.

Some of Mr. Stello's actions that were detrimental to safety were thwarted because much of what the NRC does eventually has to be made public. But in the case of the weapons facilities most of the decisions will be made behind the scenes and are not going to be available to the public. Given Mr. Stello's penchant for reinterpreting the letter of a regulation, for engaging in semantics and word games, such as whether or not somebody lied willfully and knowingly, it just seems to me that it would be impossible to rely upon Mr. Watkins to oversee his actions. If Secretary Watkins has to constantly watch Mr. Stello he might just as well not have him.

The country needs someone in charge of the nuclear weapons production facilities who agrees with what Secretary Watkins has said he wants done: namely, to put safety over production. I don't see any substantive evidence that Mr. Stello has ever conducted himself in a way that gave safety priority over production.

Senator WIRTH. Thank you, Mr. Chairman. I would be happy to yield.

Senator LEVIN. Senator McCain.

Senator McCAIN. Thank you, Mr. Chairman. Mr. Chairman, I would ask to be included in the record at this time a letter dated November 16, 1989, from the ranking minority member of that subcommittee, Ms. Barbara Vucanovich, who states, "Dear Mr. Chairman: I have just today become aware of the letter of November 13 from Chairman Kostmayer. As Ranking Member of the Subcommittee on General Oversight and Investigations, I wish to make known that I do not share all of the views of Chairman Kostmayer. No committee report has been filed. If and when a report is filed which reaches the conclusions contained within the letter, I may choose to file separate views. Mr. Chairman, I ask Mr. Stello be judged on the merits and not on innuendo." I would ask that that letter be made part of the record.

Senator LEVIN. It will be made a part of the record.

[The information follows:]

HOUSE OF REPRESENTATIVES,
CONGRESS OF THE UNITED STATES,
Washington, DC., November 16, 1989.

Hon. SAM NUNN,
Chairman, Committee on Armed Services,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I have just today become aware of the letter of November 13, 1989, from Chairman Kostmayer to you regarding the nomination of Mr. Victor Stello, Jr. pending before your Committee. As Ranking Member of the Subcommittee on General Oversight and Investigations of the House Committee on Interior and Insular Affairs, I wish to make known that I do not share all the views of Chairman Kostmayer expressed in that letter. No committee report has been filed in the wake of our October 12, 1989, hearing. If and when a report is filed which reaches the conclusions contained within the letter, I may choose to file separate views.

Basically, I believe that our Subcommittee hearing added little or nothing to the record on Mr. Stello's involvement in the so-called Roger Fortuna affair. The reports from Senator Glenn's and Representative Sharp's subcommittees detail all the allegations that Mr. Kostmayer makes.

Therefore, Mr. Chairman, I ask that Mr. Stello be judged on the merits and not on innuendo.

Sincerely,

BARBARA VUCANOVICH,
Member of Congress.

Senator McCAIN. Mr. Fersht, on page 2 of your written testimony you say, "at a meeting I had on August 25 with Secretary Watkins, Under Secretary Tuck, and Chief of Staff Gault, that I was told explicitly that Mr. Stello had been selected by the White House." Who told you that?

Mr. FERSHT. Secretary Watkins.

Senator **McCain**. So, you are basically calling Secretary Watkins a liar, is that correct?

Mr. **Fersht**. I am just telling you what Secretary Watkins told me.

Senator **McCain**. Then you are calling him a liar if you say—yesterday Secretary Watkins dismissed assertions that White House Chief of Staff John Sununu——

Senator **Kennedy**. If the witness could be permitted to answer the question, Mr. Chairman, and not have words put in his mouth. Mr. Chairman, I resent that.

Senator **Levin**. Excuse me, hold it, Mr. Fersht. We are going to have order here. Let the Senator complete his question and then give him an answer to the question and then the Senator may ask the question again.

Senator **McCain**. Thank you, please go ahead, Mr. Fersht.

Mr. **Fersht**. Senator, I stated in my testimony what occurred in a private meeting between myself, the executive director of Greenpeace USA, Secretary Watkins, Under Secretary Tuck, and Chief of Staff Polly Gault. I am only referring to a meeting that I had. Whether it contradicts something that Secretary Watkins has stated in this committee or anywhere else, I can only state what he told me.

Senator **McCain**. Thank you. Mr. Pollard, when did you leave the Nuclear Regulatory Commission, what year?

Mr. **Pollard**. In February of 1976.

Senator **McCain**. So you had no opportunity to serve with Admiral Zech who was later the head of the NRC?

Mr. **Pollard**. That is correct.

Senator **McCain**. Do you know of his reputation?

Mr. **Pollard**. Well, I certainly know he was Chairman of the Nuclear Regulatory Commission.

Senator **McCain**. Did you feel that he served well in that capacity?

Mr. **Pollard**. That is sort of a broad question. Could you be more specific? What do you mean by serving well?

Senator **McCain**. That seems to be difficult. I will withdraw the question, Mr. Pollard. In fact, I will have no further questions, Mr. Chairman, except to say that this hearing is becoming hauntingly familiar to me. We want more information, more questions answered. There will be further allegations brought. We will delay this hearing. We all know that we are going out of session in the next few days, and so for all intents and purposes, we will delay the Secretary of Energy the ability to have a capable deputy who, as other witnesses before this committee have and will testify, has the capabilities and qualifications for this office. Frankly, I am very sorry to see it happen again to a nominee of proven qualifications. I would like to tell my colleagues that this member is not deceived by this ploy of more allegations which have to be responded to and more allegations. We went through that with John Tower. But that will probably be the case, and I am sorry that the outcome of these proceedings is pretty predictable.

I think in all fairness it would be good for the Government of the United States if we could get this nominee's name to the floor of the Senate for a vote before we went out of session. I think the

President deserves that. Clearly, that probably will not happen. I have no further questions, Mr. Chairman.

Senator **Levin**. Thank you, Senator McCain. Senator Kennedy.

Senator **Kennedy**. Mr. Chairman, just to state it is always interesting to me that when you support a Presidential nominee you are being a statesman and when you raise some questions that somehow you are involved in partisanship or irresponsible action. We have seen that over in the Judiciary Committee. I voted for 400 of Presidents Reagan's and Bush's nominees for court justices. I have opposed seven. Every time you raise any kind of questions it is not partisanship. And so I would hope that our witnesses would not feel any form of intimidation by earlier kind of comments.

Senator **Wirth**. Would the Senator yield?

Senator **Kennedy**. Yes.

Senator **Wirth**. Do you know if we are going to vote this afternoon? Number one on that list was Mr. Cason, the Department of Agriculture nominee to be in charge of the Forest Service. We wanted to bring that up, and it is my understanding we are not going to be able to. The Republicans do not want to bring that up now. That is our situation anyway. I thank you.

Senator **Kennedy**. If I could, Mr. Backus, I would like to just have some response from you with regard to the Seabrook situation. As I understand, Mr. Stello recommended the change in the emergency planning rule to the Commission in February 1987. He stated in a letter to the commissioners that when the Commission in 1980 tightened the emergency planning requirements in response to the Three Mile Island experience, "the Commission believed that all affected State and local governments would continue to cooperate in emergency planning throughout the life of the license."

Now, that is not my understanding of what the Commission believed to be the basis for their improvements of emergency planning after 1980. It seemed to me they accepted the principle that if a State can demonstrate that evacuation is not feasible in certain situations, then the plant should not be licensed. In fact, is it not that very principle that made the rule meaningful?

Mr. **Backus**. Yes, indeed, Senator Kennedy. It is, in fact, in the Federal Register of August 19, 1980, that contains the then-new emergency planning requirements.

The Commission, as it was constituted at that time, expressly recognized the possibility that States in their independent judgment of what the public health and safety of their citizens required might find emergency planning at a particular plant infeasible, and the Commission said we are willing to accept that because the public health and safety cannot be compromised.

We need to have a requirement for adequate emergency planning. If that cannot be done, then the license should not issue, and that is also reflected in an opinion in the District of Columbia Court of Appeals in 1982.

Senator **Kennedy**. I am going to bring you through some questions, and I want to get a complete answer, but if you can tighten them up, it would be good now. Is it not the case that the Seabrook applicants and the NRC could have reached a determination on the evacuation issue years ago long before the plant was completed?

Mr. **Backus**. Yes, it is, Senator. We requested that that be done in 1979 and the NRC, then lead by Mr. Stello as it has been throughout, procrastinated on that.

Senator **Kennedy**. I take it, it is your understanding that the applicants in the NRC did not make the adequate determination at an earlier time and chose to gamble that when the plant was completed, the State and local governments would overlook the inherent difficulties of evacuation from the area around the plant?

Mr. **Backus**. Yes, indeed, Senator. I would say that it is a bit like Scarlett O'Hara, "I won't think about that today, I will think about that tomorrow." I think that has been their guiding principle throughout.

Senator **Kennedy**. Now, under Mr. Stello's leadership, did the NRC staff oppose the use of any technical criterion for defining reductions in exposure levels that could be used to judge whether a proposed emergency response plan assured an adequate level of protection to the public?

Mr. **Backus**. The NRC has never been willing to accept or consider any evidence of particular dose consequences. It has never, to my knowledge, undertaken any risk assessment whatsoever in determining whether or not the emergency planning requirements can be met. Instead, it has attempted to, in fact, undermine those requirements and eliminate them as a practical measure.

Senator **Kennedy**. And then, without the use of the criteria, how do you know that the evacuation plans recommended to the licensing board by Mr. Stello will offer adequate protection?

Mr. **Backus**. You have no basis for that knowledge and I submit, Senator, that the local officials, including the Governor of the commonwealth and local officials in New Hampshire, are the true experts on that. And they have determined in many, many cases, very responsibly, that there is not adequate protection.

Senator **Kennedy**. Over a month before the licensing board denied the Seabrook applicants' petition for a reduction of the evacuation planning zone from 10 miles to 1 mile—that occurred in April 1987. Now, Mr. Stello met with the Seabrook applicants and advised them to simultaneously pursue another path to obtain a license?

Mr. **Backus**. Yes, Senator. There is a transcript of that hearing. Mr. Stello, at that time, in my opinion, in a fair reading of the transcript, was plainly coaching the Seabrook utilities, the New England utility group, to undertake to file a utility plan as a way of getting around the fact that the NRC, due to, I think, extensive political opposition, was not able to go along with the attempt to shrink the emergency zone at Seabrook from 10 miles to 1 mile, which is actually shrinking it by 99 percent.

Senator **Kennedy**. Do you feel that that was an appropriate conduct for a regulatory official in Mr. Stello's position?

Mr. **Backus**. Well, I think, viewed in the overall history of this, Senator, it was not. It may have been appropriate at that time to offer the applicants suggestions as a staff person, but then the subsequent efforts to lead the staff into amending the rules, to lower the requirements for that utility plan, combines to be an undermining of the safety regulations that Mr. Stello was suppose to see were enforced, not avoided.

Senator KENNEDY. Would you agree that on that occasion Mr. Stello used inside knowledge of the workings of the Commission to advise the Seabrook litigation?

Mr. BACKUS. It seems to me that that is exactly what occurred; that there was a clear coaching of the applicants about how to formally meet the requirements while substantially avoiding the requirement for an adequate plan.

Senator KENNEDY. I would ask consent, Mr. Chairman, of the relevant portions of the NRC transcript be included in the record at this point.

Senator LEVIN. So ordered.

[The information is included as part of Mr. Backus' opening statement.]

Senator KENNEDY. Did this action cause you or the organization you represent to lose confidence in the objectivity and fairness of the NRC?

Mr. BACKUS. It was a pattern of events, of which that was one, that has caused us to lose complete confidence and that lack of confidence is widely shared today, Senator. There is attached to my testimony an editorial from the Concord New Hampshire Monitor, yesterday, calling the NRC a debased authority. And that is the extent to which I believe Mr. Stello has caused this agency to lose public credibility among the citizens of New England.

Senator KENNEDY. You have recounted Mr. Stello's actions, directed at changing the position of FEMA on the beach evacuation issue, to one that would support licensing Seabrook. To your knowledge, has FEMA's original technical analysis of the radiation hazard posed to the beach population, and the inability to evacuate swiftly, has that ever been rebutted or refuted by any submission in the Seabrook proceedings?

Mr. BACKUS. It has not. There is no evidence that anything has changed. In fact, the FEMA attorney, when he announced the FEMA change of position, acknowledged it was not based on any new facts. The facts have not changed, just the position.

Senator KENNEDY. And FEMA is the lead agency, is it not?

Mr. BACKUS. Under the Presidential Executive order and the memorandum of understanding, they are the lead agency on offsite planning.

Senator KENNEDY. So the net result of all of Mr. Stello's regulatory recommendations on the Seabrook matter is that the summer population of roughly 70,000 people is still at risk, that no meaningful plan to protect these people exists. Is that still the situation today?

Mr. BACKUS. That is the situation we face today. And there has been no attempt to adopt any measures that would ameliorate that condition.

Senator KENNEDY. Thank you very much, Mr. Chairman.

Senator LEVIN. Thank you, Senator Kennedy. Just a couple of questions for you, Mr. Pollard. I am looking at your statement that Senator Wirth made reference to, of August 30, an interview with you.

Mr. POLLARD. I will have to get one, Senator.

Senator LEVIN. On page 3 of that interview, you are making reference on this to the Browns Ferry fire, I believe.

Mr. **Pollard**. Yes, sir.

Senator **Levin**. Near the bottom of page 3, you see where it says, "More than 5 years after a nearly disastrous fire at TVA's Browns Ferry nuclear plant?"

Mr. **Pollard**. Yes, sir.

Senator **Levin**. The NRC finally adopted new fire protection regulations. Is this based on personal knowledge, this testimony?

Mr. **Pollard**. Yes, sir, it is. And, in fact, in my prepared statement for today's hearing, I have gone into much more detail than in this interview about my personal role in the fire protection. Also, I took the opportunity last evening and this morning to look at the additional information which Mr. Stello submitted on the eve of this hearing. I have only gotten through the first chapter, because I wanted to see what he had to say about fire protection. I think that—well, let me get it out.

Senator **Levin**. While you are getting that out, what was your personal role; can you summarize it for us?

Mr. **Pollard**. Yes, sir. First, I was the NRC's representative on an industry standards committee, which was responsible for developing design standards in the area of fire protection.

Senator **Levin**. What year was that?

[Pause.]

That is okay. You can provide for the record.

Was it 1975 and 1976, in there?

Mr. **Pollard**. It was earlier than 1975—well, it must have been earlier than 1975—I will have to provide that for the record.

[The information follows:]

I was the NRC's representative on an industry standards committee that was responsible for developing design standards in the area of fire protection for approximately 2 or 3 years during the period from about 1972 or 1973 to 1975.

Senator **Levin**. And after that position, then what? Is that what you base your personal knowledge on, as the NRC representative?

Mr. **Pollard**. No, sir. I mean, this is also my area. Part of the real importance of fire protection in nuclear plants is in the electrical cables used to monitor and control the safety systems.

Senator **Levin**. I want to go back just a bit and set the stage. You were personally involved in these events that you describe in this testimony at the bottom of page 3? That is my question. It is a very simple question. I am not trying to get technical.

Mr. **Pollard**. Yes, sir.

Senator **Levin**. So you were personally involved?

Mr. **Pollard**. Yes, sir.

Senator **Levin**. And your capacity was—give us the capacity that you were involved.

Mr. **Pollard**. First, my capacity as a reactor engineer on the Atomic Energy Commission staff or, if the date is different, as a project manager on the NRC staff, and also as the NRC's representative to an industry standards committee, which was writing portions of the design standards adopted as fire protection. Now I had argued, within the NRC, that I did not think the industry standards were adequate and I objected to them being used. But they were nevertheless adopted.

Senator **Levin**. And when Mr. Stello essentially instructed an NRC attorney to prepare an interpretation of the NRC regulations that would satisfy the utilities, did you hear that conversation?

Mr. **Pollard**. No, sir. Perhaps it—well, you can use whichever document you want, but I have already repeated that in much more detail in my statement.

Senator **Levin**. Well, show us what page it is.

Mr. **Pollard**. Sure.

Senator **Levin**. What page of your statement did your personal knowledge of that direction, that essential instruction from Mr. Stello; your personal knowledge of that instruction?

Mr. **Pollard**. Oh, well, the personal knowledge of that instruction comes from the House Interior Subcommittee report of December 1987.

Senator **Levin**. I have read that report. So when you represented, he has essentially instructed an attorney to prepare an interpretation, you are not basing that on your own personal knowledge?

Mr. **Pollard**. No, not that section.

Senator **Levin**. That is based on your reading of the same House Committee report that we read?

Mr. **Pollard**. Yes, sir.

Senator **Levin**. Then on page 4 of this statement that you are looking at, this UCS August 30 interview, you say another example occurred after the Three Mile Island accident. Do you see that?

Mr. **Pollard**. Yes, sir.

Senator **Levin**. Is that based on your personal information that you personally observed or saw, or is that also secondhand?

Mr. **Pollard**. No, that part is my own personal experience as a party to the Three Mile Island licensing restart proceeding at Unit 1.

Senator **Levin**. Very good. Let me come back because my time is up. Senator Exon.

Senator **Exon**. I have no questions, Mr. Chairman. Thank you very much.

Senator **Levin**. Senator Wirth.

Senator **Wirth**. I do. Tell me, as an aside, in response to an earlier question, Mr. Pollard, you said that you do not know any more about weapons than Mr. Stello does. Why did you throw that in? What was the meaning of that?

Mr. **Pollard**. Well, because—no, the question, it was because of the way the question was asked. I was asked about, in the operation of weapons complexes, can we have both safety and production.

Senator **Wirth**. Are you telling us that there is a different kind of, a very different kind of expertise from the sort of expertise that you had, working on nuclear power plants, which is necessary to manage a nuclear weapons complex?

Mr. **Pollard**. Yes, sir. Which is why I answered the question posed with respect to commercial nuclear power plants. I am sure that if Mr. Stello, as he testified yesterday, were just being put in charge of the Savannah River reactors, that he is clearly qualified for that position. My point was that there is an awful wide range of technologies in the Department of Energy weapons facilities, which are not within the technologies used in light water reactors, which is primarily where Mr. Stello's training and experience are.

Senator WIRTH. So what you are really essentially doing in that statement is suggesting that, in your opinion, Mr. Stello does not have the training necessary for this job. I do not want to put words in your mouth, but I am just trying to say, why did you make that statement? It jumped out at me.

Mr. POLLARD. Well, it was in my written testimony as well. I pointed out there why I think Mr. Stello is not qualified to be an Assistant Secretary for Defense Programs. But I also went on to say, that would not necessarily disqualify him from this position, if he had demonstrated a conduct where he would be willing to listen to and act upon the recommendations of his subordinates, based on the technical merits of their——

Senator WIRTH. You were here yesterday to hear Mr. Stello's testimony and comments, is that right?

Mr. POLLARD. Yes, sir.

Senator WIRTH. Did you listen to his comments on his role in the leak rate falsification at Three Mile Island?

Mr. POLLARD. Yes, sir, I did.

Senator WIRTH. We hear technical terms like leak rate and falsification bandied about. In layman's terms, what is the significance of this incident and what is the significance of the withholding of information about the falsification? Why should we care?

Mr. POLLARD. Well, it is a legal requirement, number one. The NRC does include that in the license requirements, that there must be leak rate testing to determine what the leak rate is.

The significance of that from a safety point of view is that if you are having leakage from a reactor, above a limited amount, the risk is that that leakage could all of a sudden increase to a torrent. And so you do not want to be running the reactor, having a hole somewhere essentially, that you do not know why. Now everything leaks a little bit so we have to have some limit. But if you see an increase in leakage and you do not know where it is occurring, then you must shut down; otherwise, you run the risk of creating, or that leak leading to a major accident.

Senator WIRTH. So if you were to falsify the data, that is important, is that right?

Mr. POLLARD. Absolutely important.

Senator WIRTH. Is that a criminal violation to do that, or if so, of what?

Mr. POLLARD. I am sorry, Senator. I am not an attorney; I would not have any idea if it is criminal or not.

Senator WIRTH. Well, there is a good deal of discussion that has occurred, which I am sure that we are all going to have a chance to look at, about what happened, and what Mr. Stello's role was. And again, yesterday I gave Mr. Stello a list of questions on Three Mile Island for him to answer.

There have been allegations of falsification of data, and that Mr. Stello knew about this and then said that they had no indication, that they did not know about this. I gather that they, in fact, did know about it and did not do anything about it. Is that the problem here or what is the issue on that?

Mr. **Pollard**. No. The problem, as I see it, from the standpoint of Mr. Stello's personal role and its implications for whether he should be confirmed as Assistant Secretary, is not as Mr. Stello testified yesterday, a question of whether or not he was in charge of the NRC inspector, who knew that they were doing this before the accident. Nor is it anything to do with the 40-day period after the accident that Mr. Stello referred to as a highly tense period which was, he said, the basis for his remark to—well, I forget who now—Julian Greenspun, I think—that he was not going to have anybody tell him what to do with his licensees; that any criminal investigation would be bad for morale. That is not the point.

And I am sure Mr. Stello is much more familiar with this record than I am, and I would have to assume that the reason he did not point out his personal involvement yesterday was because he chose not to.

Let me go over this. Mr. Stello is personally responsible, in my view, for the withholding and concealment of this leak rate falsification on three separate occasions at least.

Number one, Mr. Stello, at the time he was the director of the Office of Inspection and Enforcement in the NRC, was in charge of preparing a report entitled, "Investigation Into the March 28, 1979, Three Mile Island Accident, by the Office of Inspection and Enforcement." That report is numbered NUREG–0600 and was published in August 1979. Mr. Stello, personally, was in charge of that report. There is nothing in that report about the leak rate falsification. In fact, as I went through, personally, to compare a draft of this report that was given to the utility to comment on before the public version—I think the main issue about NUREG–0600 is not the information that is in it, but the information that is not in it, including the leak rate falsification.

The next occasion was when the Commission was considering the restart of Three Mile Island Unit 1. The Commission asked the staff and Mr. Stello, personally, to review the record of a trial which was going on, a lawsuit between the Three Mile Island utility, GPU, and the manufacturer of the reactor, Babcock & Wilcox, to determine whether there was any information in the record of that lawsuit that the Commission should consider as being relevant in their decision whether to restart Three Mile Island Unit 1.

In Mr. Stello's report of his review of the trial records, there was no mention of the leak rate falsification. It was so obvious that Mr. Stello's conclusion, that there was no information of any relevance to the restart decision, was wrong, that the Commission ordered another investigation. That investigation is reported in NUREG–1020LD. The LD stands for limited distribution. That report was completed in November 1983 but was not released to the public until some time in June 1984.

What that report says is, when a separate group, this time the Office of Investigations headed by Ben Hayes, went back and looked at the trial record, they found seven areas in which they thought the information was relevant to the Commission's decision, including the leak rate falsification.

And the third area here is somewhere where perhaps this committee is going to have to do further investigation. In October of 1985, Sharon Connelly, whose name has come up again with respect to the Nine Mile Point slush fund, wrote a letter to Julian Greenspun and said, she was not sending to Julian Greenspun, who was still then in the Justice Department, her report, which she characterizes as—"this report has been reviewed and approved by me, but I am delaying its issuance to the Commission, pending your review and advice as to its further distribution."

Now in this memo, which she sent to the Justice Department, is a memo she is preparing for the NRC commissioners. The subject of this memo to the commissioners is an October 17, 1983, NRC letter to Congress. The NRC was responding in this October 17, 1983, letter to questions posed by Congressmen Udall and Markey.

Now a portion of this memo that is directly relevant to Mr. Stello, is that Sharon Connelly says, and I repeat, she was finished with this. She just asked the Justice Department's advice whether to change it before she sent it to the Commission. She said there were some areas where possible investigative areas should be pursued. And I will just read these two paragraphs:

First, "the Commission was briefed twice, during August and October 1979, on issues relating to the preaccident leak rate calculations, but the answer does not state why Hartman's allegations were not brought to the Commission's attention at that time."

What that means is, when the NRC staff briefed the NRC commissioners in August and October 1979, far after the 40 days Mr. Stello referred to yesterday, there is no explanation as to why this matter was not brought to the attention of the NRC commissioners.

Then the next issue, "during the October 1979 briefing, Commissioner Ahearne asked Victor Stello, then Director, Office of Inspection and Enforcement, and Norm Mosely, IE, [which means he also was from Inspection and Enforcement] if there was any suspicion of criminal violations regarding the issues for which the staff was proposing civil penalties at TMI. Both Stello and Mosely said they had no indications of criminal violations, even though the IE investigative team had received Hartman's allegations in May 1979."

Senator WIRTH. Is that document you are reading from a public document?

Mr. POLLARD. I believe it is. I believe that it is an accurate document.

Senator WIRTH. I would like to make that a part of the record and I hope that everybody does have that and we have a chance to look at this. These are pretty serious allegations that you are making, are they not?

Mr. POLLARD. Excuse me, Senator, I am not making allegations. I am stating facts about Mr. Stello's role in NUREG–0600; facts about his review of the TMI trial record. And this document, which I did not prepare, can speak for itself.

Senator WIRTH. Just to close, Mr. Chairman, and I am finished. Again, for the purposes of figuring out how this memorandum compares to the book of 14 that we got night before last, which is presumably meant to answer all of the allegations that have been made. I hope that we have a chance to compare these two, and find out if Mr. Pollard is correct or Mr. Stello is correct.

Senator LEVIN. This document will be made a part of the record. It is a three-page memo for Chairman Palladino, as I understand it, from Sharon Connelly, subject, October 17, 1983, letter to Congressman Udall. Attached to it is a letter to Julian Greenspun from—Sharon Connelly signed it for somebody else.

[Documents referred to are attached.]

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

MEMORANDUM FOR: Chairman Palladino
Commissioner Roberts
Commissioner Asselstine
Commissioner Bernthal
Commissioner Zech

FROM: Sharon R. Connelly, Director
Office of Inspector and Auditor

SUBJECT: OCTOBER 17, 1983 LETTER TO CONGRESSMAN UDALL

On April 23, 1985, the Chairman informed the Director, Office of Inspector and Auditor (OIA), that the Commission wanted OIA to review documents in NRC relevant to NRC's October 17, 1983 answers to questions in an August 1, 1983, letter from Congressmen Udall and Markey. The questions related to allegations made by Harold Hartman, a former control room operator at Three Mile Island, that leak rate calculations had been falsified prior to the 1979 accident. OIA's efforts were limited to a document review based on Department of Justice (DOJ) instructions that OIA conduct no interviews.

The attached report presents the results of OIA's document review. These results are presented in two ways: (1) as comments on the adequacy and accuracy of the answers to the questions, and (2) as possible additional investigative areas requiring interviews.

Scope

Our review was conducted at 26 offices or locations throughout NRC during the period from May 6, 1985, through June 21, 1985. During our review we catalogued 2011 documents of which approximately 1300 were determined to be relevant to one or more of the questions from Congressmen Udall and Markey.

Conclusions

Our review did not disclose any documentation indicating the staff intentionally withheld or distorted any information in responding to the congressional questions. In fact, the documentation available during August and September 1983, shows that the staff made a significant effort to obtain the information needed to answer the questions. Numerous interviews were conducted by an employee in the Office of the Executive Legal Director (ELD) to determine who knew what, when. Numerous drafts of the proposed responses were circulated among the offices involved and attempts appeared to have been

CONTACT: Fred Herr
49-24462

made to accommodate comments received. It appears that because of the time passed since many of the events in question occurred (over 3 years in some cases), the sparsity of documentation available, and in some cases conflicting recollections of events, the answers to some questions were not as specific as the question asked or as they could have been. In addition, because both the Office of Investigations and a DOJ Grand Jury were investigating the allegations at that time and TMI restart proceedings were underway, it was believed to be inappropriate to provide full responses in some cases.

Our review did identify the following specific problems with responses to specific questions.

-- Question 1

1. Documentation shows the Commission was informed in writing about the Hartman allegations on March 26, 1980; two months before the answer to question 1 indicated.
2. The answer discusses who had reached or known of conclusions concerning falsification of leak rates prior to May 1980 rather than May 1983 as the question asks.
3. The documentation shows that many more people than Thomas T. Martin, then Chief, Reactor Projects Section 3, Reactor Operations Nuclear Support Branch, Region I, and Harold Ornstein, a member of NRC's Three Mile Island Special Inquiry Group, had information available to them which could have led them to conclude that the leak rate calculations were falsified. The staff's answer merely indicates that "senior members" of certain offices had information, rather than identifying individuals as the question asked.
4. Documentation indicates that Martin may have orally communicated his conclusions to other NRC officials as early as April 1980. The answer said no one was aware of Martin's conclusion prior to May 1983.

-- Question 2

1. The Commission was briefed twice, during August and October 1979, on issues relating to the pre-accident leak rate calculations, but the answer does not state why Hartman's allegations were not brought to the Commission's attention at that time.
2. During the October 1979 briefing, Commissioner Ahearne asked Victor Stello, then Director, Office of Inspection and Enforcement (IE), and Norm Moseley, IE, if there was any suspicion of criminal violations regarding the issues for which the staff was proposing civil penalties at TMI. Both Stello and Moseley said they had no indications of criminal violations, even though the IE investigative team had received Hartman's allegations in May 1979 and had not followed up on

them. This information is not in the responses to Congressmen Udall and Markey.

-- Question 3

1. This response could be criticized for not identifying John Sinclair's recollection that he was informed in October 1981 by DOJ that NRC was free to resume its investigation. The answer from NRC's perspective reflected the beliefs and recollections of Victor Stello, then Director, IE, and James Cummings, then Director, OIA, the two senior NRC officials responsible for the issues in question, based on an October 13, 1981 meeting with DOJ officials.

2. Apparent discrepancies between a Cummings 1983 letter to Lowell Jensen, DOJ, and a draft memo to the Chairman from Stello documenting the October 1981 meeting with DOJ appear to have been resolved by a January 31, 1985, interview of Stello by the Director, OIA.

While we do not believe, based on our document review, that there are significant inaccuracies or omissions from the October 17, 1983 answers to the questions, we did identify possible additional areas for investigation relating to Questions 1, 2, and 3 which would require interviews to complete. Whether this additional investigative effort will be undertaken depends on obtaining permission from DOJ to conduct interviews and whether the Commission believes it necessary to have the investigation undertaken after DOJ completes its actions.

Attachment:
As stated

THIS REPORT IS BEING PROVIDED FOR THE COMMISSION'S INFORMATION.
NO ACTION IS REQUIRED BY THE COMMISSION AT THIS TIME.

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

October 30, 1985

Mr. Julian Greenspun
Deputy Chief for Litigation
Criminal Division
U. S. Department of Justice
Ben Franklin Station
P. O. Box 887
Washington, DC 20044-0887

Dear Mr. Greenspun:

In accordance with an October 29, 1985, telephone conversation between you and Fred Herr of my staff, enclosed is a copy of the Office of Inspector and Auditor's report on the results of our review of NRC's October 17, 1983, responses to Congressional questions regarding allegations of leak rate falsification at Three Mile Island. This report has been reviewed and approved by me but I am delaying its issuance to the Commission pending your review and advice as to its further distribution.

If you have any questions regarding this report or would like to discuss its contents, please contact Fred Herr on 492-4462.

Sincerely,

Sharon R. Connelly, Director
Office of Inspector and Auditor

Enclosure:
As stated.

Senator **Levin**. And now it is your turn, Senator Warner.

Senator **Wirth**. Mr. Chairman, unfortunately I have to go. I thank you very much. I am sorry that I have to leave.

Senator **Levin**. Senator, you are more than welcome.

Senator **Wirth**. Thank you, Mr. Chairman.

Senator **Levin**. Senator Warner.

Senator **Warner**. I have no objection, of course, to putting that in the record. But I would like the record to reflect that Senators are referred to a committee file which contains the U.S. Department of Justice, Federal Bureau of Investigation file, dated July 1, 1986. And I would say that with respect to allegation number one, bottom of page 2, which essentially is this one, the evidence does not indicate a coverup with regard to the Hartman allegations in 1979. I am not asking that this whole report be reprinted. I simply refer Senators who want to look at that to this document, which has a complete explanation by the Federal Bureau of Investigation.

Senator **Levin**. Do you want a portion of that document?

Senator **Warner**. No.

Senator **Levin**. The record will so reflect.

[The document referred to is retained in executive files of the committee.]

Senator **Warner**. If the Senator wants to read that, then he would feel obligated to read that. That is just a reference to it.

Senator **Levin**. That insert will be placed in the record, Senator Warner.

Senator **Warner**. Thank you, Mr. Chairman.

Senator **Levin**. Thank you very much.

Senator **Warner**. I have followed this proceeding with great care and first, I express my appreciation to you gentlemen for coming in here today. I think it is important that we get a balanced perspective and I respect your views; reasonable persons can differ on this nomination. But I want to see if I am correct in one or two things here.

As I listened to the famous 14 allegations, according to our records, they have been brought before three committees of Congress, the GAO, the Department of Justice, and the NRC, and our records are replete with responses from all those various entities. Is there anything that you feel that you have brought forward today that is new and different than the 14 basic allegations in this case, or is it just your perspective of those 14? And basically, I judge from your nodding your heads, that essentially you are here addressing those 14 points.

Mr. **Backus**. Well, Senator Warner, my testimony did go to another point and that was the role of Mr. Stello in what we consider to be the weakening of the NRC's requirements for emergency planning to facilitate licensing.

Senator **Warner**. Yes. You are quite correct on that, and I appreciate your bringing that up.

Mr. **Fersht**. Senator, there is one point for which you were not present in my testimony.

Senator **Warner**. And by coincidence, I am on the committee with the clean air bill and we are marking it up today and that, I suppose, is a first cousin of some of the things we are doing here. Believe me, there is a lot of excitement up there. Go ahead.

Mr. FERSHT. I referred to the Stello-White telephone conversation in which Mr. Stello noted that on April 22, 1988, the GAO investigation found——

Senator WARNER. Would that be in our category of the Seabrook investigation?

Mr. FERSHT. No. That would refer to the Stello GAO investigation. I wanted to add something though that contradicts what Mr. Stello said in his factbook and his testimony yesterday.

Senator WARNER. All right. That is important.

Mr. FERSHT. Which was, as he said in his testimony, that the GAO found insufficient evidence to support the OIA investigators' claims that the NRC management interfered with the conduct of the OIA investigation, or that the results were incorrectly reported. However, what I noted in my testimony was that the GAO also stated in that very same report that the GAO concluded that the OIA's investigation of the alleged improper conversation between Stello and White was not sufficiently thorough. The OIA failed to determine what it was investigating. Furthermore, the OIA failed to pursue the investigation in a timely and systematic manner, which suggests to me, not an exoneration, that Mr. Stello claimed yesterday.

Senator WARNER. All right. And I thank you for that notation. Gentlemen, when this hearing opened, I expressed that this Senator's view is, in terms of the constitutional role of the Senate here, in advice and consent, and balance that against the President's prerogative to select those individuals, Cabinet, sub-Cabinet, and otherwise, whom he feels can best advise him, as President of the United States. And in this instance the President has exercised that prerogative and we are now simply, not simply, but in an important way, reviewing our constitutional role.

I feel, in the 11 years that I have been here in the Senate, that the Senate should place its greatest emphasis on issues of character and integrity. We can differ with Presidents on their policies, we can differ with people on how they may manage things, but if there is a character flaw, in terms of integrity, honesty, with this Senator it rings a bell.

I am searching here, in this case, because there is so much conflicting views. If there is present anything in the nature of a question about this individual's character, his integrity, and my attention is drawn, Mr. Fersht, to a letter which I understand and I state that—I do not have the letter before me from your organization, which I must say is one that intrigues me. Being a bit of a sailor myself, I have watched you perform on the high seas and you have got a lot of courage in some instances.

Mr. FERSHT. Thank you.

Senator WARNER. But anyway, a letter to the President of the United States, which—do we have that letter here, gentleman? But anyway, while we are looking for it, that letter purports to accuse Mr. Stello of lacking integrity.

Now I also have present in this room some documents, some information from Admiral Zech, the former chairman of the NRC. I have to tell you, in all fairness, that when I was privileged to serve in the Department of the Navy, Admiral Zech was there and I gained a very high respect and admiration for him. And he takes entirely the opposite view. So my question is, (a) is there such a letter and did it make that allegation? And (b) that allegation of lack of integrity is predicated on what facts?

Mr. **Fersht**. There were several letters in question, some of which we submitted to the committee, urging that this nomination be rejected, and we have also similarly suggested to Secretary Watkins and to President Bush that the nomination be withdrawn.

Senator **Warner**. Am I correct that one of the grounds for your position is that the gentleman lacks integrity?

Mr. **Fersht**. The essential point in my testimony, which is submitted for the record, is that we are calling into question Mr. Stello's abilities to fulfill the role of Assistant Secretary for Defense Programs and the integrity with which he has fulfilled his professional role at the NRC.

Senator **Warner**. Integrity is a broad term. What are the facts that you feel provide a basis for your challenging this individual's integrity?

Mr. **Fersht**. Steven Schwartz, our legislative coordinator, participated in a review of most of the 14 incidents which are addressed in Mr. Stello's factbook. We produced a report, in conjunction with several other organizations, entitled, "The Wrong Stuff," an information summary on Victor Stello, in which we itemized all of the instances, some of which have been touched on by Mr. Pollard, of cases where Mr. Stello, his professional conduct and I would say, integrity, have been called into question. And I have asked that this report be submitted for the record. It provides the basis for our allegations, that we feel Mr. Stello is the wrong man for this job.

Senator **Warner**. I thank you for your testimony and I understand, Mr. Chairman, that at some point in time Admiral Zech, the former chairman, will be given an opportunity to provide his perspectives to the committee and most specifically, on the question of the evaluation of this individual's integrity. I thank the Chair.

Senator **Levin**. Thank you, Senator Warner. I was going to just briefly ask the staff to give us a report, hopefully by tomorrow's meeting, but in any event as soon as possible, about the chronology relative to the falsification allegations and how the falsification allegations relate to tests about leak rates.

There has been a real confusion here that should be clarified as to what Mr. Stello has said he knew and when he knew it, and what he did with the information when he found out. And what others, either witnesses or other reports from other sources, say about what Mr. Stello knew and what he did with that information when he knew it. It is a very important allegation and I think it is important that we sort it out.

And so, as the acting chairman, I would ask our staff if they would prepare that chronology.

Apparently this document has not been available to our staff until recently—this October 17, 1983, letter to Congressman Udall, a memo about that from Sharon Connelly, and certain attachments. That could help them sort this out.

Chairman **Nunn**. Senator Levin, I would certainly join you in that request to the staff. I would say that I have no idea how long that will take. And I would ask the staff to do the best they can.

Senator LEVIN. We thank this panel, and unless Chairman Nunn has some additional questions, we will call our final panel for today. Thank you, gentlemen, for coming forward.

Chairman NUNN. We appreciate your being here today.

Senator LEVIN. Our final panel is Mr. Marcus Rowden from the law firm of Fried, Frank, Harris, Shriver and Jacobson, and Mr. Lando Zech, Jr., who is the former chairman of the Nuclear Regulatory Commission. Admiral Zech, I understand you are a former chairman of the NRC, as I mentioned, and I gather Mr. Rowden is as well. I should have added that in my introduction. Mr. Rowden, will you proceed please.

STATEMENT OF MARCUS ROWDEN, FRIED, FRANK, HARRIS, SHRIVER AND JACOBSON

Mr. ROWDEN. Thank you, Mr. Chairman. I appreciate and welcome the opportunity to offer my views to the committee on Victor Stello's competence and character; views based on a lengthy working relationship with Mr. Stello while I was a Government official, and on my knowledge of his performance as a nuclear regulator since then. As indicated in an earlier stage of these hearings, a letter statement of my views is already on record.

[The information referred to follows:]

FRIED, FRANK, HARRIS, SHRIVER & JACOBSON,
Washington, DC, October 18, 1989.

Hon. SAM NUNN,
Chairman, Senate Armed Services Committee,
U.S. Senate, Washington, DC.

DEAR SENATOR NUNN: The President's nomination of Victor Stello, Jr. to be Assistant Secretary of Energy for Defense Programs is currently under consideration by the Armed Services Committee. Since the nominee's competence and character are central to his qualifications for office, I would like to offer my views on those matters based on a lengthy working relationship with Mr. Stello while I was a government official and on my knowledge of his performance as a nuclear regulator since then.

Mr. Stello was a regulatory staff official at the Atomic Energy Commission during the time when I was the AEC's Associate General Counsel for Regulatory Matters and later its General Counsel (1971–1974). Subsequently, he was Assistant Director for Reactor Safety at the Nuclear Regulatory Commission during the period when I was a Commissioner and, then, Chairman of the NRC (1975–1977). I thus had substantial opportunity to assess Mr. Stello's professional capabilities, his character and his performance as a nuclear regulator—often in circumstances where the demands on him were extraordinary.

Throughout that period—and as I have followed his NRC career thereafter—Mr. Stello has been an exceptionally effective nuclear regulator. His technical competence, as judged by his peers, is plainly of the highest order. That competence, coupled with his energy and uncompromising sense of responsibility, has repeatedly led his superiors to seek him out for the most demanding tasks. Mr. Stello's performance, moreover, has consistently justified their confidence in him.

As is well known in the nuclear regulatory community (among regulators and regulated alike), Victor Stello is straightforward to the point of bluntness. He is intolerant of second rate performance, impatient with delay, and direct in his communication of criticism. These are uncomfortable, even abrasive, characteristics to some people; they are, however, invaluable attributes to those who rely on him to deal with difficult problems in a timely and uncompromising manner. Indeed, "uncompromising" is as apt a characterization of Victor Stello's approach to his regulatory duties as I can find.

Critics of Mr. Stello's nomination have charged him with undue liberality to the nuclear industry during his tenure at the NRC. I find those charges ludicrous. To me, he is the prototypical "tough regulator"—tough in the standards he sets, remorseless in insisting on their observance and unvarnished in his communication to those in the industry who do not measure up to those standards. These traits may not make him a pleasant fellow in some quarters, but I find them singular assets for a public official charged with nuclear safety responsibilities.

All of these attributes were on full display when Mr. Stello worked with me and for me at the AEC and the NRC. I believe, moreover, that they have served the nuclear regulatory program well in his discharge of the increasing management responsibilities he earned at the NRC in the dozen years since I left the agency.

I have every confidence that if confirmed by the Senate Victor Stello will serve his Department and the country with distinction and that his proven managerial talents, nuclear safety experience, and dedication will be put to effective use. I respectfully urge the Committee's favorable consideration of Mr. Stello's nomination.

Sincerely yours,

MARCUS A. ROWDEN.

Mr. ROWDEN. Mr. Stello was a regulatory staff official at the Atomic Energy Commission during the time when I was the AEC's Associate General Counsel for Regulatory Matters and later as the General Counsel during the period 1971 through 1974. Subsequently, he was Assistant Director for Reactor Safety at the NRC during the period when I was a Commissioner and then Chairman of the NRC from 1975 to 1977. I thus had substantial opportunity to assess Mr. Stello's professional capabilities, his character, and his performance as a nuclear regulator, often in circumstances when the demands on him were extraordinary.

It is my judgment, Mr. Chairman, Mr. Stello was then and has been thereafter, an exceptionally effective nuclear regulator. His technical competence, as judged by his peers, is of the highest order. And that competence, coupled with his energy and uncompromising sense of mission and responsibility, has repeatedly led his superiors to seek him out for the most demanding tasks. Mr. Stello's performance, in my view, has justified their confidence in him.

With Victor Stello, what you see is what you get. He is straightforward to the point of bluntness; intolerant of second-rate performance; impatient with delay; and direct in his communication of criticism. He is certainly not an "on the one hand and on the other hand" sort of fellow. He is driven by a strong sense of what he believes is technically sound and right from a regulatory standpoint. Moreover, in my interactions with him, while I was in government and thereafter, there have been no closet agendas on his part and no self-promotion behind the positions he, typically, very forcefully takes.

To me, these are invaluable attributes for those who rely on him to deal with difficult problems in an uncompromising manner. Indeed, uncompromising is as good a characterization of Victor Stello's approach to his regulatory duties as I can find.

Critics of Mr. Stello's nomination have charged him with undue liberality to the nuclear industry during his tenure at the NRC. "Coziness," I believe, is the word of the day. I find those charges ludicrous. To me, he has been the prototypical tough regulator. Tough in the standards he sets for himself, as well as others; remorseless in insisting on their observance; and unvarnished in his communication to those in the industry who do not measure up to those standards.

All of these attributes were evident when Mr. Stello worked with me and for me at the AEC and the NRC. I believe, moreover, that they have served the nuclear regulatory program well in Mr. Stello's discharge of the increasing management responsibilities he earned at the NRC in the 12 years since I left the agency.

I have every confidence, Mr. Chairman, that if confirmed by the Senate, Victor Stello will serve his department and his country with distinction, and that his proven managerial talents, nuclear safety experience, and dedication will be put to effective use. I respectfully urge the committee's favorable consideration of Mr. Stello's nomination. Thank you.

Chairman NUNN [presiding]. Thank you very much, Mr. Rowden. Mr. Zech.

STATEMENT OF LANDO W. ZECH, JR., FORMER CHAIRMAN, NUCLEAR REGULATORY COMMISSION

Mr. ZECH. Thank you, Mr. Chairman. I do not have a prepared statement but, with your permission, I would like to offer a few brief comments. First of all I do have, Mr. Chairman, a letter I have written to you, sir, and a couple of letters that I have written to the Washington Post on this matter, which I would also ask, with your permission, to have put in the record.

Chairman NUNN. Without objection, they will be made a part of the record at this point.

[The letters referred to follow:]

OCTOBER 10, 1989.

Hon. SAM NUNN,
Chairman, Senate Armed Services Committee,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The purpose of this letter is to support the nomination of Victor Stello, Jr. to be the Assistant Secretary of Energy for Defense Programs.

I first met Vic Stello when I became a member of the U.S. Nuclear Regulatory Commission (NRC) in 1984. When I became Chairman of the Commission in 1986, I requested and received support from my fellow Commissioners for Vic Stello to become the Executive Director of Operations (EDO), the senior career position. When I completed my five year appointment in July 1989, my successor retained Vic Stello as the EDO.

The reason I selected Vic Stello for this important position was my keen desire to improve the performance of the NRC and to improve the performance of the commercial nuclear power industry in our country. In order to accomplish these important goals, I needed an Executive Director who was technically competent, action-oriented, and unwaveringly committed to safety. I wanted an individual with the moral courage and toughness to make the hard decisions which were bound not to please everyone, but would be the right ones for the American people. Vic Stello met all those qualifications and performed as the EDO under my chairmanship in a superbly outstanding manner.

For the recent improvements in the NRC and for the very measureable safety and reliability improvements in the commercial nuclear industry in our country, Vic Stello deserves a very large measure of credit. He gets things done. But Vic Stello is much more than a doer-and-shaker. He is a family man, a highly principled individual, a people-oriented man, a dedicated and patriotic American, and certainly one of our nation's finest public servants.

Vic Stello did not seek this enormously difficult, almost thankless job. He was asked to take it. I am personally aware that he agreed to accept the appointment only because he felt he could not refuse to serve in a position of such national importance.

Mr. Chairman, I strongly recommend your approval of his nomination. I am confident that, if confirmed, Vic Stello will continue to serve our nation with great distinction.

With kindest regards.

Sincerely,

LANDO W. ZECH, Jr.

October 10, 1989.

Hon. John W. Warner,
Senate Armed Services Committee,
U.S. Senate, Washington, DC.

Dear Senator Warner: As you probably know, I completed my five year appointment, the last three years as Chairman, on the U.S. Nuclear Regulatory Commission in July, 1989. It was a privilege to serve my country again in that important assignment.

I well remember our days together when you were Secretary of the Navy, and I will always be grateful to you for your very kind introduction and for your strong support during my nomination process.

I am enclosing a copy of a letter which I have written to Senator Nunn regarding the nomination of Victor Stello, Jr. to the position of Assistant Secretary of Energy for Defense Programs.

I know Vic Stello very well and, as the letter states, have worked closely with him for the past five years.

Vic Stello truly is one of our very finest public servants and is exactly the person whom Secretary Jim Watkins and our country needs.

I strongly recommend you support Vic Stello for that important position.

With kindest regards.

Sincerely,

Lando W. Zech, Jr.

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30 October, 1989.

Letter to the Editor.

I believe the very biased article (October 17, 1989) by Mary McGrory concerning Victor Stello, Jr., should not stand unchallenged.

I am enclosing a copy of a letter I sent to the Editor on October 19, 1989. I hope you will see fit to publish my letter.

Lando W. Zech, Jr.,
Falls Church, VA.

October 19, 1989.

To the Editor, *The Washington Post.*

Dear Sir: Mary McGrory's character analysis (Oct. 17, 1989) of Victor Stello, Jr., nominated by President Bush to be the Assistant Secretary of Energy for Defense Programs, does not describe the man I know and worked closely with during my five years as a member of the U.S. Nuclear Regulatory Commission (NRC).

Ms. McGrory's unflattering ethnic references to his Italian background were entirely uncalled for. Mr. Stello is a great American. He is highly intelligent, technically competent, a dedicated public servant, and completely committed to public health and safety. He is tough, honest, and has the moral courage to admit a mistake and learn from it.

In his position at the NRC as the Executive Director of Operations, the most senior career civil servant, he has been called upon to make many difficult and important recommendations and decisions. His approach has always been to get all the facts, make a careful analysis of public health and safety concerns, and then take whatever action may be necessary to ensure safety.

Ms. McGrory refers to an instance where "getting all the facts" was obviously very difficult. However, Mr. Stello did not shy away from attempting to obtain information which he believed might bear on safety. It is surprising that he is being criticized for attempting to obtain potential safety information. Would his critics rather that he not do so?

I believe our nation would be fortunate to have Victor Stello, Jr., with his great experience as well as his competence and his strength of character, serve in such a critical position in our government. I strongly support his nomination.

Lando W. Zech, Jr.,
Falls Church, Va.

Mr. Zech. Thank you, sir. Mr. Chairman, I am a Vice Admiral-retired, U.S. Navy. I had the privilege, shortly after I retired from the Navy, to serve my country again in a civilian capacity as a commissioner of the U.S. Nuclear Regulatory Commission, serving the last 3 years as its chairman.

I know Victor Stello very well. I worked very closely with him these past 5 years. I know him to be a man of honor, integrity, competence, and straightforwardness in getting the job done. He is much more than that, though, Mr. Chairman. He is the senior career civil servant in the Nuclear Regulatory Commission, with the title of Executive Director for Operations. During my term as chairman of the Nuclear Regulatory Commission, I had almost daily contact with Victor Stello. I do know him very well. He served me, Mr. Chairman, and he served this country extremely well, with the highest honor, integrity, and capability, during my term on the Nuclear Regulatory Commission.

How would I characterize Victor Stello briefly for this hearing? First of all, he is technically competent. Secretary Watkins is absolutely correct in the choice he has made for this very, very demanding job for our country. Victor Stello is a highly competent nuclear engineer. He is a very hard worker. He subscribes to attention to detail. He is a nuts-and-bolts engineer. He knows what he is talking about. When he goes to visit power plants or when he interfaces with the industry, he knows what he is talking about, and they know he knows what he is talking about. He is a knowledgeable individual in all aspects of nuclear power plants, all aspects. He is a safety-first engineer.

Now, Victor Stello has been involved for over 20-some years in a very controversial program in our country. Your committee, Mr. Chairman, has heard many allegations. To my knowledge, during my term, working with Victor Stello on the Commission, he has been investigated many times by Congress, by the NRC, by the GAO, by the FBI. At no time during any investigation do I have any knowledge that he was accused of any type of wrongdoing.

Yes, he was involved in controversial issues. And I am saying to you, Mr. Chairman, he will continue to be so involved if he is confirmed by the U.S. Senate for this important role. He will continue to be challenged. He will be disagreed with on his judgments. But I am confident, I am very confident, that Victor Stello will make the right decision for our country. He makes his decisions based on one thing: What is the right thing to do? That is the kind of individual he is.

He is a demanding supervisor. Yes, you have heard that. Some of his juniors do not like the way he demands performance. Yes, he is a demanding supervisor. Yes, he is brusk at times. Yes, he is not the most tactful individual in the world. Yes, he is not a diplomat, and he has told this committee that. Yes, his physical appearance sometime gets people concerned. But he has a heart, a big heart, with that big physical appearance, a great big heart. And I have seen it time and time again. There is nobody who takes better care of his people at the NRC than Victor Stello, nobody.

He instituted many people programs that we did not have before, that he and I discussed, and Victor was behind those programs fully, and really the instigator of many of them. He has improved staff morale at the NRC. He has been involved in their welfare in many, many different ways. He is loyal to his juniors and he is loyal to his superiors. He is a great public servant, Mr. Chairman, and a great patriot.

He is one of the finest public servants I have ever known. In my privilege of serving this country, in the uniform of my country, for 42 years, I have served with some wonderful people in the U.S. Navy, some absolutely wonderful people, dedicated people, who would put their life on the line for their country. I have served with them; I was proud of that. When I came to the Nuclear Regulatory Commission, I was serving with civilians. And I can tell you unequivocally, Mr. Chairman, that there is no more patriotic and dedicated civilian public servant than Victor Stello.

He is not a yes-man, no, sir, he is not a yes-man. He is decisive; he is firm. But I tell you, Victor Stello is a good listener, he is a very good listener. He admits a mistake when he makes it. That is a quality that I admire greatly in Victor Stello. We all make mistakes. I have made plenty of them. But Victor will admit his mistakes, as we all should when we make them. And he learns from his mistakes. He is not just admitting mistakes just because it sounds good. He does not admit mistakes if he does not think they are mistakes, but if he thinks they are, he will admit them and he will learn from them.

He is an inspiration to the people who work for him. They see how hard he works. Nobody works any harder in the agency, the Nuclear Regulatory Commission, than Victor Stello, and the people know that.

He is a safety-first engineer, Mr. Chairman. And all these things that you have heard about and your committee has heard about in the past couple of days, all these allegations bear on judgments that Victor Stello has been involved in involving safety. And in my view, in my personal experience with him, he has made the decision based on what is the right thing to do; what is the right thing to do. If it is safety, that is always priority for Victor Stello.

I am confident that this committee, Mr. Chairman, will get straight answers from Victor Stello if you see fit to confirm him for this important role. You will get straight information and straight answers when he comes before you. He will serve our country, and serve it well. He deserves your confirmation, Mr. Chairman, in my view.

He has the highest competence in engineering judgment and the highest integrity. I know Admiral Watkins was very careful when he selected him. The country needs him, Admiral Watkins needs him, the President needs him, and I think the American people need Victor Stello in this very, very difficult job. I think, Mr. Chairman, we should all be grateful that a man of Victor Stello's ability, honesty, competence, and dedication as a public servant is willing to take on this very, very difficult assignment.

Mr. Chairman, I submit that you have many important things to do, and I commend you for your great service to our country. And I know in your wisdom you will do what is right. But I want you to know that I strongly support this nomination. And thank you very much, Mr. Chairman.

Chairman NUNN. Thank you very much, Mr. Zech. We appreciate your service to the country over these years. A tremendous career.

Mr. ZECH. Thank you, sir.

Chairman **Nunn**. Let me ask both of you a few questions. You have covered part of it, but let me just go down the list and ask each of you these questions, then you can embellish on them as we go. First of all, how long have you known Mr. Stello, Mr. Zech?

Mr. **Zech**. Yes, sir. I have known him since July 1984 when I came on the Commission, and I have known him since then very closely.

Chairman **Nunn**. Mr. Rowden.

Mr. **Rowden**. I first began to work with Mr. Stello when we were both senior staff officials at the Atomic Energy Commission in the late 1960s. Later, we both went to the Nuclear Regulatory Commission; he became a senior official in the division of nuclear reactor regulation, I became commissioner and chairman, and we worked together, then, in that capacity. Since then, I have interacted with him periodically, in terms of regulatory matters of common interest.

Chairman **Nunn**. Mr. Rowden, have you ever known Mr. Stello to take any action that would violate the law?

Mr. **Rowden**. I have not, sir.

Chairman **Nunn**. Have you, Admiral Zech?

Mr. **Zech**. No, sir, I have not.

Chairman **Nunn**. Have you ever known of any action he has taken that would violate a regulation?

Mr. **Rowden**. I do not know of any, sir.

Mr. **Zech**. Nor do I, sir.

Chairman **Nunn**. Have you ever known of anything he has done that you believe is questionable, as far as ethics?

Mr. **Rowden**. In terms of ethics, no, sir. I may have disagreed with his judgment on certain policy matters; that is the nature of the interaction. But, as far as ethical considerations are concerned, he is literally a straight-up individual.

Chairman **Nunn**. Admiral.

Mr. **Zech**. And I agree. He is an absolutely sound individual, ethically, Mr. Chairman. There is absolutely no question about it.

Chairman **Nunn**. Has he any personal habits that you know anything about that would in any way interfere with his ability to perform his job?

Mr. **Zech**. Absolutely not. He is a family man of the highest character in every way that we could expect a good American to be, Mr. Chairman. I know that for a fact.

Mr. **Rowden**. I subscribe to that judgment fully, Mr. Chairman.

Chairman **Nunn**. Are there any decisions that he has taken that you question his judgment on, I mean of a serious nature, Admiral?

Mr. **Zech**. Never. We have disagreed on a few things, but on nothing that would be a judgmental call that would be serious.

Chairman **Nunn**. Not to the extent you think he has bad judgment?

Mr. **Zech**. Absolutely not. His judgment is superb.

Mr. **Rowden**. Victor Stello has never hesitated to tell me I do not know what I am talking about, but he has also never hesitated to follow the decision of the agency when it was made. He is a man in whose technical judgment and integrity I have complete confidence. And all of my interactions with him, I believe, bear that out.

Mr. **Zech**. I agree 100 percent.

Chairman Nunn. Did you ever have a fundamental difference with him, Mr. Rowden, on a matter of health or safety?

Mr. Rowden. No, sir.

Chairman Nunn. Admiral.

Mr. Zech. Nor did I, sir. Never. Safety and public health are his highest priority, Mr. Chairman.

Chairman Nunn. Do you believe he tilted towards industry?

Mr. Zeck. Absolutely not. He is tough on the industry, Mr. Chairman, and they know it. He calls them like he sees them. And I think that the industry would tell you that, too. They do not always agree with him at all. And he is tough on them when he has to be. I do not think he tilts towards them at all. He plays it down the middle. He gets criticized from both sides. I think he plays it straight.

Mr. Rowden. I think that is a fair characterization. I would say many in the industry are terrified of Mr. Stello as a regulator, because they know he is someone who cannot be pushed around. I think they do have respect for him, because he makes decisions and he sticks by those decisions.

Chairman Nunn. You have heard the testimony here; unfortunately, I did not hear it. I had to be away and I am going to have to leave again in a minute. I hope we can conclude before I have to go. We have the Defense appropriation bill coming up, and we have just had the authorization bill yesterday, so I am on the reconciliation conference and the intelligence conference. It is the end of the session and it is impossible to do everything. But you have heard the testimony and you have heard these credible, reputable witnesses testify against him. Did you hear any allegations there that you are personally familiar with? I am saying, in the details, are there any of the allegations that you have heard this afternoon that you are familiar with, that you want to comment on, Admiral?

Mr. Zech. The only thing I would say, Mr. Chairman, is that I was not on the Commission 10 years ago; I have been there for only the past 5 years, and I just left the Commission, as you know, in July. But during my 5 years on the Commission I heard many things that happened before. None of those things that I heard today were of any great surprise to me. Although I do not have intimate knowledge of all the ones that happened before I was on the Commission, to my knowledge, all of those allegations have been answered. Now, there may have been something that was new, but I do not believe so. If there was, the record will show that, because several of the witnesses indicated there may have been something that they thought was new. I am not so sure it was new. What they have said today were things that I have heard about.

Victor Stello has indeed been involved in many controversial decisions. He has taken the actions that he thought were necessary. If they were recommendations that he made to the Commission and the Commission acted on, the Commission should accept the responsibility and does accept the responsibility for those decisions; or, in other circumstances, he made recommendations and decisions on his own, for which he has authority delegated to him. I did not see anything new or anything damaging here that I have heard that would cause me to change my mind on my support for Victor Stello for this nomination.

Mr. ROWDEN. My watch ended on June 30, 1977, Mr. Chairman. All of what I have heard with respect to matters that preceded that date are matters that have been thoroughly investigated either by the AEC, the NRC, the Joint Committee on Atomic Energy, or other congressional committees. I heard nothing that was new to me, sir.

Chairman NUNN. What is it that makes Mr. Stello so controversial? Is it personality? Is it the way he does business? Or is it the nature of the job he was in?

Mr. ZECH. I think mainly it is the nature of the job he is in, Mr. Chairman. I think anybody would be controversial in the job he is in. I do think, though, combined with that are his characteristics of being a demanding individual. He wants to get the job done. He wants to get it right. And he has had to make a lot of judgments, though, in this very controversial area. I would say that was the main reason.

Anybody involved in nuclear power issues, Mr. Chairman, as you well know, in our country, for these past years, and these many years that he has been involved in it, is going to be controversial. There are some people who are not going to like any decision that is made.

I certainly learned that when I was on the Commission, especially when I was the chairman. I made every decision thinking that it was the right thing to do, and I can assure you, Mr. Chairman, that a lot of people disagreed with the decisions I made. I believe they were the right thing to do. I think Victor Stello had the moral courage to make that kind of judgment, and for that he gets criticized.

Chairman NUNN. Mr. Rowden, do you have any observations on that?

Mr. ROWDEN. I think it is a combination of several factors. One, unquestionably, is the nature of the program in which he is involved. All of us who have been involved in this program have experienced the controversy, the accusations, the charges and countercharges that go along with it, particularly when you make decisions. That latter observation relates to Mr. Stello's orientation. He is not just action-oriented, he is results-oriented. He is a man who I characterize as being uncompromising in living by his convictions. He calls them as he sees them. He is not afraid to step on toes.

My own view is that someone with his capabilities—I am talking about his technical capabilities, his managerial capabilities, and yes, even his personal capabilities—is someone that the nuclear regulatory program badly needs. So, I believe that he has made a valuable contribution. I can see, however, why those who have worked with him and those who have been stung by decisions that he has made—and I am talking about those in the industry, not just those who you have heard here casting accusations questioning his regulatory judgments—I can see why they have been uncomfortable, if not more, with Mr. Stello.

Chairman NUNN. Do either of you have any question about his ability to handle his job, the weapons production job for the Department of Energy?

Mr. ZECH. No, sir, none at all. He can handle the job, Mr. Chairman.

Mr. **Rowden**. I concur in that judgment fully, Mr. Chairman.

Chairman **Nunn**. I appreciate very much your being here. I can assure you that even though there are not many members here, they are following this testimony and your testimony. And I assure the previous panel I have standing orders for my staff to give me a summary of the testimony that has been given when I am not here. I regret I could not be here for the whole matter. Do you have anything else, Mr. Rowden or Admiral Zech, that you would like to offer?

Mr. **Rowden**. Just my thanks to the chairman and the committee for indulging us and hearing our views, sir.

Mr. **Zech**. I would just like to thank the chairman, too, and with all my heart, Mr. Chairman, hope that your committee will see fit to confirm Mr. Stello for this important job. Our country needs him. Thank you, Mr. Chairman.

Chairman **Nunn**. Thank you very much. Mr. Stello, I know you have been here all afternoon. We did not serve notice to any members of the committee that you would be back testifying this afternoon and so I am not going to ask you to come back, but we may very well need to do that later. Will you be around tomorrow and early next week?

Mr. **Stello**. Whenever you need me, Mr. Chairman, I will be available.

Chairman **Nunn**. We are going to meet tomorrow. We will take an inventory of what other testimony, what other documents, what other witnesses, and so forth we need, and whether any others have made requests to appear. We will be in touch with you. I appreciate your patience.

The hearing is now concluded.

[Whereupon, at 4:21 p.m., the hearing was adjourned.]

NOMINATION OF VICTOR STELLO, JR., TO BE THE ASSISTANT SECRETARY OF ENERGY FOR DEFENSE PROGRAMS

MONDAY, NOVEMBER 20, 1989

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC.

The committee met, pursuant to notice, at 3 p.m., in room SR-222, Russell Senate Office Building, Senator Sam Nunn (chairman) presiding.

Committee members present: Senators Nunn, Glenn, Wirth, and Warner.

Committee staff members present: Arnold L. Punaro, staff director; and Andrew S. Effron, general counsel.

Professional staff members present: Robert E. Bayer, David S. Lyles, and Frederick F.Y. Pang.

Minority staff members present: Patrick A. Tucker, minority staff director and counsel; and Romie L. Brownlee, deputy staff director.

Staff assistant present: Barbara L. Braucht.

Committee members' assistants present: Jeffrey B. Subko, assistant to Senator Exon; Phillip P. Upschulte, assistant to Senator Glenn; and Charles G. Pearcy, assistant to Senator Lott.

Chairman NUNN. I would like to update committee members on the nomination of Victor Stello to be the Assistant Secretary of Energy for Defense Programs.

As the members know, the committee began the hearing phase of this nomination last week and we held 2 days of hearings. When we began the hearings, there were a number of documents and other material required and requested that had not yet been received. In addition, members of the committee identified additional items and witnesses that may be required.

The committee met in executive session on Friday to discuss this and other pending nominations. The committee staff was directed to review all the material, the status of various requests, additional material that had just been received, and to work this over the weekend and to advise Senator Warner and myself today as to the status.

We have reviewed with the staff and with other members of the committee the situation. Based on their report, on the request by certain members for additional hearings, and the fact that even if the committee voted today, the Senate would not be able to act on Mr. Stello's nomination prior to adjournment, the committee will not be voting on this nomination prior to the recess. Senator Warner and I have discussed this, and this is the conclusion.

It is my intent, however, to have the committee act on this nomination as soon as practicable when we return after January 23. To ensure that all possible work is done in the interim, the committee staff will work during the recess to review all documents and to prepare the necessary paperwork for committee action.

Senator Exon has agreed to chair additional sessions of the committee to hear from additional witnesses. It is my hope that we can either do this during the recess period or immediately upon our return. By accomplishing a substantial amount of work during the recess, this nomination can be considered quickly when we return. So, that is the status as of now. Are there any questions? Senator Warner, do you have any?

Senator WARNER. Thank you, Mr. Chairman. When we discussed this option it was understood that Senator Thurmond would be joining Senator Exon.

Chairman NUNN. That is absolutely correct. Senator Thurmond will be joining Senator Exon. And as a matter of fact, depending on when the hearings are held, I am going to try to be here too.

Senator WARNER. And I likewise. May I say to you, Mr. Chairman, that personally I want to thank you. This has been a difficult case, and I think throughout you have been very objective and forthright, certainly with this Senator and, as far as I know, all members of the committee on this nomination. You did exercise your best efforts at my request to see whether or not the Senate could act prior to this recess we anticipate here within a day or so. And I think this fallback procedure, if I might characterize it as that, is certainly in no way to be interpreted by this Senator as indicating any weakness of support that I see in this nominee's chances for eventually receiving Senate confirmation. So, I just wish to thank you again on that.

I will work with the committee and develop such a record as we feel is needed in addition to what is already developed. I must say the volume of material for this nomination is almost without precedent for various reasons. Mr. Stello has either been the object of or a participant in a number of examinations of issues and results over the years, and it is necessary for the committee to do a thorough job.

I think you and I agreed we have done everything we could do, but we certainly felt the reputation of this committee and, indeed, our ability to go down before the Senate as a whole required, particularly in the case of this nomination, an absolute, complete record such that you and I and other members of this committee could answer and respond to any inquiry by another Member of the Senate.

Chairman NUNN. This is correct.

Senator WARNER. Therefore, there were many reasons that lead us to the conclusion that we now have to resort to a subcommittee—well, it is the full committee.

Chairman NUNN. It will be the full committee, the subcommittee chairman, Senator Exon, and subcommittee ranking member, Senator Thurmond, but it will be at the full committee level.

Senator WARNER. Fine, and I thank you again.

Chairman NUNN. Thank you very much, Senator Warner. First, Senator Glenn, then Senator Wirth.

Senator GLENN. Just a question on the Stello nomination. He can continue as he is now, is that correct? I believe he is on detail from the Nuclear Regulatory Commission. Will that continue? This doesn't interfere with that, does it?

Chairman NUNN. I have talked to Admiral Watkins about that, and he is now studying the possibilities. But that is really their call rather than our call. This does not impede the executive branch from doing whatever they have the right to do otherwise. That is a matter for them to decide. But I am sure that Admiral Watkins will inform us.

Senator GLENN. There is a limit, I believe, on how long people can be assigned. I don't know what that limit is. I know in a vacancy act, people can be assigned to new positions in Government for 120 days, I think it is. I am not sure on this, where he is on loan from one department to the other, whether there is a specific restriction on that or not.

Chairman NUNN. We have staff looking into that right now, Senator Glenn. I can't answer that right at the moment, but there is certain flexibility.

Senator GLENN. Okay.

Senator WARNER. Mr. Chairman, could I make an observation in response to Senator Glenn's question?

Chairman NUNN. Of course.

Senator WARNER. We are also dealing with a human being, whether we like it or not, and the man has to provide for his family and for himself and has a career ahead of him. He has to make a decision, given what has transpired here in this committee, as to whether or not there is a likelihood that at some point in time the Senate will act on his nomination and what is likely to be the outcome of that action by the Senate as a whole.

We can only speak individually at this time because each of us perhaps has different views, and we have not as yet completed the work of the committee. But I wish to represent that I feel, based on the facts that I have seen to date and based on representations made to me, that the future hearings are not likely to produce any material that is substantially different in any way from that material which we now have in our possession—nevertheless, those hearings are important—I think there is every likelihood that the Senate eventually will act favorably upon this nomination.

It is my hope that Mr. Stello will make himself available to the Secretary of Energy to continue to serve that Department in such capacity as is proper under the various rules that the executive branch is required to act.

Chairman NUNN. Of course, they have certain positions over there that are not subject to confirmation so that even if Mr. Stello were turned down for this position, which is subject to confirmation, he would be entitled to be appointed in some other capacity. That is strictly an executive branch decision. So, one option, of course, would be for the Secretary of Energy to avail himself of that and to have him in certain positions that are not subject to Senate confirmation. Another would be to retain him as a consultant. That is a matter for them to work out. But I am sure he is going to keep us informed, and by us, I mean the entire committee.

Senator **Warner**. Mr. Chairman, if the Secretary and Mr. Stello decide to go into what I call a holding pattern, simply by doing that, it should not indicate to this committtee or others a lessening of their intention to have this nomination eventually acted upon by the Senate.

Chairman **Nunn**. I know of nothing. I have been told nothing except they intend to proceed full steam ahead once we return. We have tried to complete hearings on this, but we have an incomplete record now. It is just not complete, and I do not want to go to the floor with an incomplete record no matter what the action is of this committee. I think we have always tried to have a complete record. We have tried to be very thorough with our nominations, and we want to continue with it at this time. The time is such we cannot complete the record to give our colleagues a full understanding of the charges and the answers, the best we can ascertain the answers.

Senator Wirth.

Senator **Wirth**. Thank you, Mr. Chairman. I think that this is a very fair approach to take, and I think it is a very appropriate approach for the committee to take in filling out the record and making sure that we can answer questions that have come up. The volume of material, as you point out, Senator Warner, is without precedent, but so are the controversies surrounding the nuclear weapons plant at this point, the story this morning on Savannah River just adds to the kinds of problems that we have.

Chairman **Nunn**. Don't tell me there is another one! I haven't seen that one!

Senator **Wirth** [continuing]. What?

Chairman **Nunn**. You mean I have to read another one? [Laughter.]

Senator **Wirth**. There's another one coming up, yes, on tritium at Savannah River. You'll like that one a lot. Mr. Chairman, each of us, I am sure, will be free to submit to Senator Exon and Senator Thurmond the ideas that we might have for witnesses that ought to be interviewed—

Chairman **Nunn**. Absolutely.

Senator **Wirth** [continuing]. Or called and the issues that we think have to be examined. And I would hope a couple of other things. Let me just try two thoughts.

One, a great deal of work has been done by other congressional staffs on this, particularly the Energy and Commerce staffs. I would hope that our staff would feel free to go over and make sure that we are touching all the bases there so we don't get caught blindsided by not doing something and then we get three or four letters from the other side saying, hey, you didn't do this.

Chairman **Nunn**. Senator Wirth, that is a good suggestion, and that has already been the instruction given to the staff. Every committee that has had hearings on this, our staff will be meeting with their top people and not only reviewing the record, but discussing it with them.

Senator **Wirth**. Thank you, Mr. Chairman. The other suggestion I have is a bit more problematic, and I am not sure how to go about doing this. But one of the arguments that is the most pressing one made by Secretary Watkins is that he cannot find anybody else, that given the pay situation, this is the only person that he can find who is qualified for the job and willing to take the job. Now, if that is the case, so be it. But I have trouble believing that out of 235 million Americans and a lot of people in a nuclear industry that has been going now pretty intensively for 30 or 40 years, that there isn't anybody else out there.

Is there any way in which that allegation can be examined? That is a very powerful argument Secretary Watkins makes. If Mr. Stello is the only person, that is one set of arguments to be made. I don't want to be prejudging one—measuring one candidate versus another, but the flat statement made by the Secretary that there is nobody else who is qualified who would take the job was a pretty powerful statement for him to make.

Senator **Warner**. The Secretary said four people turned him down.

Senator **Wirth**. I know that.

Senator **Warner**. Might I suggest to the Senator that you personally write the Secretary of Energy and ask him to amplify that response, and then that would become part of the record?

Chairman **Nunn**. I would think that that would be something we wouldn't want to charge the staff with because while a nomination is pending, we don't want the staff trying to find out if there are alternatives. That would be an unprecedented action. But any Senator that wanted to submit certain names that perhaps might be available based on that Senator's determination, I think that would be a matter of interest to the committee. But I wouldn't want to ask staff to go out and see if there are alternatives.

Senator **Wirth**. That's why I asked the question——

Chairman **Nunn**. That's the executive branch——

Senator **Wirth** [continuing]. To see what is the best way of going about this. I understand the sensitivity of this. That is why I prefaced it the way that I did.

Chairman **Nunn**. I think if you would talk to Admiral Watkins and then we would be very receptive to whatever your views are after you look into it. That would be fine. It is a powerful argument because that is a key position.

Senator **Wirth**. Absolutely. I understand the sensitivity of the position, the importance of filling it, the problems that we have, and so on.

Chairman **Nunn**. I think it is the pay. I think there are plenty of people out there, but there are not plenty of people at that pay. Most of those people that have that kind of expertise in the nuclear area have all sorts of job opportunities.

Senator **Warner**. Well, theoretically, Mr. Chairman, that is not a problem isolated to Admiral Watkins.

Chairman **Nunn**. No.

Senator **Warner**. Might I make one other suggestion to the Chair and to the staff involved? I personally would not like to return here in January and find that there are still some questions about witnesses who allegedly know something and have not come forward. I would hope that we would, if necessary, write witnesses and ask that they, in turn, write us back. Do they have knowledge and are they willing to testify or not testify?

Chairman **Nunn**. We will do that.

Senator **Warner**. I just think that once we resume the committee's work in the hearings that will take place between now and January, that that ought to be done. For the committee to resume its work when Congress returns, all the Ts should be crossed and all the Is should be dotted and we should be ready to go forth and make a decision on this case.

Chairman **Nunn**. I agree with you. Senator Glenn, will you close the hearing when you get through with your questions?

Senator **Glenn**. I just have a couple of minutes left, Mr. Chairman, so I will close it.

Senator **Warner**. I will conclude with one last statement, which I just lifted from our able Senator here from Colorado, who is very much involved in his State in this area of nuclear power and weapons and the like, and that is that the continued vacancy of this key position might well be contributing to some of the problems that we are seeing across America today. And, therefore, I think it is incumbent upon the executive branch to work with the legislative branch to fill that vacancy at the earliest opportunity.

Senator **Wirth**. I could cut that argument a lot of ways. I hear what the Senator is saying, but I don't want us to be taking the rap for the problems at Savannah River because we haven't filled the slot.

Senator **Warner**. No, I'm not suggesting anybody take the rap. You suggested there may be other people and that might be the case.

Senator **Wirth**. There might well be. I don't know.

Senator **Warner**. I'm suggesting that this is the President's choice, and we ought to give him full faith and credit until such time as we find evidence to the contrary. In my opinion, we have yet to find that evidence. You may have a different view.

Senator **Wirth**. I think that the procedure set forth is a fair one, and I appreciate the work and forbearance that you and Senator Nunn have shown. I think it is good for the committee and ultimately is going to be good for the country to go through this process.

Senator **Warner**. Mr. Chairman, I would ask that the colloquies that we have had here relevant to the Stello nomination be printed by your reporter at the earliest possible time and that copies be made available to other members of this committee to the extent they desire it and copies be made available to Admiral Watkins.

Senator **Glenn** [presiding]. If I could ask, would it be appropriate that they be printed separately from the basic purpose of this meeting so this doesn't show up as a major part as though we are questioning Ms. Crawford or General Cooper about this?

Senator **Warner**. That's correct.

Senator **Wirth**. I think it is a very good suggestion to have this whole procedure laid out and done very quickly and separately so that the world knows what we are doing, what the debate was, what the issues were, and so on. We have to make sure that this is out there for the public and Ms. Crawford doesn't have to live in the face of all of this.

Senator **Glenn**. Perhaps staff can decide how they want these things printed up here, but I think they should be separate.

Senator **Warner**. I said just the colloquies that we talked about on Mr. Stello be printed. Not printed, just transcribed and available to other members of the committee and to the President and his cabinet.

Senator **Wirth**. And to other interested outside groups that might have a concern about this issue.

Senator **Warner**. Absolutely.

[Whereupon, at 3:15 p.m., the committee resumed consideration of the nominations of Ms. Crawford and General Cooper.]

NOMINATION OF VICTOR STELLO, JR., TO BE THE ASSISTANT SECRETARY OF ENERGY FOR DEFENSE PROGRAMS

TUESDAY, DECEMBER 19, 1989

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC.

The committee met, pursuant to notice, at 1:06 p.m., in room SR-253, Russell Senate Office Building, Senator J. James Exon presiding.

Committee members present: Senators Exon, Kennedy, Bingaman, Gore, Wirth, Warner, and Thurmond.

Staff members present: Arnold L. Punaro, staff director; Andrew S. Effron, general counsel; and Marie Fabrizio Dickinson, assistant chief clerk.

Professional staff members present: Sherri Wasserman Goodman and Elizabeth Farcht.

Minority staff members present: Patrick A. Tucker, minority staff director and counsel; Romie L. Brownlee, deputy staff director for the minority; Inga B. Schoonover, special assistant; George W. Lauffer and John E. Mansfield, professional staff members.

Staff assistants present: Elizabeth Ann Harlow, Mary J. Kampo, Cindy Pearson, Debra A. Rice, and Mickie Jan Wise.

Committee members' assistants present: Jeffrey B. Subko, assistant to Senator Exon; William J. Lynn and Christopher E. Paine, assistants to Senator Kennedy; Leon S. Fuerth, assistant to Senator Gore; Jefferson B. Seabright, assistant to Senator Wirth; Melvin G. Dubee, assistant to Senator Byrd; and James M. Bodner, assistant to Senator Cohen.

OPENING STATEMENT OF SENATOR J. JAMES EXON, PRESIDING

Senator EXON. I am going to ask you all to please understand that my voice is very incomplete today, but I will try to struggle on and hope you can hear me.

The committee meets this afternoon to consider the nomination of Victor Stello, Jr., to be the Assistant Secretary of Energy for Defense Programs. The committee has already held 2 days of hearings, November 15 and 16, on this nomination, receiving testimony from seven witnesses in addition to the nominee himself. From the seven witnesses we learned a great deal about the situation, the charges, and the concerns on this overall nomination.

On November 17, the committee met in executive session to discuss the nomination. The committee agreed that additional work related to this nomination was required and that additional witnesses would be heard, and that work would continue during the recess. Chairman Nunn announced this publicly on November 20. The committee decided upon this course of action, both to allow the committee to gather additional testimony as requested by the members to ensure that the thorough review of all the documentation and testimony occurred, and to be in a position to receive a full report and have a complete discussion on all of the above when we reconvene in January.

On November 29 Senator Nunn wrote to all members of the committee to announce that a hearing would be held on December 19 to receive testimony from additional outside witnesses. Senator Nunn also asked members of the committee to inform him of any witnesses that they believe would be important to the committee's deliberations on Mr. Stello, and for other suggestions.

All individuals whose names were submitted by the members of the committee were asked to testify at today's session. I would ask unanimous consent that Senator Nunn's letter of November 29, as well as the letters of invitation, be included in the record. Without objection, so ordered.

[The information referred to follows:]

U.S. Senate,
Committee on Armed Services,
Washington DC, November 29, 1989.

Hon. J. James Exon
Hon. Carl Levin
Hon. Edward M. Kennedy
Hon. Jeff Bingaman
Hon. Alan J. Dixon
Hon. John Glenn
Hon. Albert Gore, Jr.
Hon. Timothy Wirth
Hon. Richard C. Shelby
Hon. Robert C. Byrd
Hon. John W. Warner
Hon. Strom Thurmond
Hon. William S. Cohen
Hon. Pete Wilson
Hon. John McCain
Hon. Malcolm Wallop
Hon. Slade Gorton
Hon. Trent Lott
Hon. Dan Coats

U.S. Senate, Washington, DC.

Dear Members: As you recall, at the Committee meeting held in executive session on November 17, 1989, to discuss pending nominations, it was agreed that the Committee should hold additional hearings during the recess on the nomination of Mr. Victor Stello to be the Assistant Secretary of Energy for Defense Programs. This was also discussed at our Committee hearing on November 20, 1989. A copy of my statement at that meeting is attached.

The Committee decided upon this course of action both to allow the Committee to gather additional testimony and to review all the documentation, as several members had suggested, and to be in a position to expeditiously consider the nomination upon reconvening in January. The Committee will have a very busy agenda then with a full set of Committee activities, including hearings on the significance of the changes in the Soviet Union and Eastern Europe for our military and national security strategies and budgets. For this and other reasons, the Committee decided to accomplish as much as possible on the Stello nomination during the recess.

Senator Jim Exon has agreed to chair a full Committee hearing on Mr. Stello's nomination on December 19, 1989, at 1:00 p.m., in SR-222, at which time the Committee will receive testimony from additional outside witnesses. Please notify Senator Exon and me on or before December 5, 1989, of any additional witnesses whose testimony you believe would be a useful addition to the record and to the Committee's deliberations on Mr. Stello's qualifications. We will seriously consider all such recommendations. If you have any additional suggestions as to what the Committee and our staff should be reviewing during the recess in terms of the Stello nomination, please include that in your response. It is my intention to have the Committee's preparatory work on this nomination accomplished during the recess and I would urge anyone with suggestions to provide them now.

Sincerely,

SAM NUNN,
Chairman.

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC, December 6, 1989.

Mr. JAMES ASSELSTINE
Mr. PETER BRADFORD
Mr. JULIAN GREENSPUN
Mr. BEN HAYES
Mr. HAROLD DENTON
Mr. JIM WEST
Mr. DAVID GAMBLE
Mr. JIM MCCARTEN
Mr. BILL WARD
Mr. WILLIAM PARLER
Mr. JOHN SINCLAIR
Ms. MAUREEN GAWLER
Hon. JOHN D. DINGELL
Mr. VICTOR GILINSKY

DEAR POTENTIAL WITNESS: As you know, the Senate Armed Service Committee is considering the nomination of Mr. Victor Stello to be the Assistant Secretary of Energy for Defense Programs. The Committee has already held two days of hearings on this nomination on November 15 and 16. Your name has been suggested by one or more of the Committee members and/or other Members of Congress as an individual in possession of information which the Committee may consider to be material to the question of Mr. Stello's qualifications and fitness to serve in the position to which he has been nominated.

Accordingly, the Committee on Armed Services requests that you appear at a hearing to be conducted on Tuesday, December 19, 1989, at 1:00 p.m., in SR-253. We understand that the Committee staff has previously discussed with you this request to appear and to present any information you have that bears on the Committee's consideration of this nomination. We urge that you make every possible effort to testify so that the Committee will have all relevant information regarding the nominee prior to acting on this nomination early in the next session.

Copies of the transcripts of the Committee's previous hearings on the Stello nomination are available, if you desire, for your use in preparing for this hearing. These transcripts are for your use only, as they are unedited and have neither been reviewed for accuracy nor released by the Committee.

We look forward to receiving your reply.

Sincerely,

SAM NUNN,
Chairman.
JOHN WARNER,
Ranking Minority Member.

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC, December 7, 1989.

Mr. VICTOR STELLO,
Potomac, MD.

DEAR MR. STELLO: The Armed Services Committee is planning to conduct a hearing on your nomination on Tuesday, December 19, 1989, at 1:00 p.m., in room SR-253. The Committee has requested the appearance of individuals that Committee Members and/or other Members of Congress have suggested may possess material information on your qualifications and fitness to serve in the position to which you have been nominated.

The Committee would like to give you the opportunity to appear before the Committee again. The enclosed transcripts are provided for your use in preparing for the hearing. These transcripts are for your use only, as they are unedited and have neither been reviewed for accuracy nor released by the Committee.

We look forward to receiving your reply.
Sincerely,

SAM NUNN,
Chairman.
JOHN WARNER,
Ranking Minority Member.

Senator **EXON**. I would also like to ask unanimous consent at this time that any and all prepared statements of the witnesses today be included in the record in their entirety. And we will ask each of the witnesses to try and limit their time according to the lights. Also, we will have the lights in control of the Senators' time, and because of the very full plate that we have here today, with a total of 14 witnesses, we are going to try and move this along as quickly as we can.

I would like to ask that the balance of the statement of the chairman be included in the record as if delivered.

[The prepared statement of Senator Exon follows:]

OPENING STATEMENT OF SENATOR J. JAMES EXON

The committee meets this afternoon to continue consideration of the nomination of Victor Stello, Jr. to be the Assistant Secretary of Energy for Defense Programs.

The committee has already held 2 days of hearings—on November 15 and 16—on this nomination, receiving testimony from seven witnesses, in addition to the nominee himself. On November 17, the committee met in executive session to discuss the nomination. The committee agreed that additional work related to this nomination was required and that additional witnesses would be heard and that work would continue during the recess. Chairman Nunn announced this publicly on November 20.

The committee decided upon this course of action both to allow the committee to gather additional testimony as requested by the members, to ensure that a thorough review of all the documentation and testimony occurred, and to be in a position to receive a full report and have a complete discussion on all of the above when we reconvene in January.

On November 29, Senator Nunn wrote to all the members of the committee to announce that a hearing would be held on December 19 to receive testimony from additional outside witnesses. Senator Nunn also asked the members of the committee to inform him of any witnesses they believed would be important to the committee's deliberations on Mr. Stello and for other suggestions they had. All individuals whose names were submitted by members of the committee were invited to testify at today's session. I would ask unanimous consent that Senator Nunn's letter of November 29 as well as the letters of invitation be included in the record.

The committee has asked each individual who was invited and who could not appear today to submit a letter or statement in writing to be included in the record. I ask these statements and/or letters be made a part of the record.

I intend to ask each witness to share any personal knowledge that relates, either positively or negatively, to Mr. Stello's qualifications and fitness for office and to respond to specific questions that members may have for them.

The committee thanks all those witnesses who are here today, particularly considering the upcoming holidays. I also want to thank Senator Kennedy and Senator Wirth and other members for being available for today's hearing despite the inconvenience to their schedules.

I will introduce each panel as we are ready for them. I will ask each witness for any opening remarks and then we will move to questions for that panel.

Senator **EXON**. At this time I am glad to yield to Senator Warner for any opening comments that he has.

Senator **WARNER**. Thank you, Mr. Chairman. And I welcome you and Senator Wirth here today. Chairman Nunn and I rank this nomination as being very important to move forward on. The committee, as you have noted, has proceeded very carefully and thoroughly. I further note that all of the testimony received to date has indicated that the President's nomination of Mr. Stello for this position, in the judgment of these witnesses who have testified, is ably qualified to fill this position. We now have additional witnesses here today and I am anxious to hear this testimony, so let us proceed.

Senator EXON. Thank you, Senator Warner. Senator Wirth.

Senator WIRTH. Thank you very much, Mr. Chairman. I would note, not for the record, that the chairman's vain cheering for the Nebraska football team is probably the cause of the throat problems that we have today. [Laughter.]

Mr. Chairman, thank you very much for holding this hearing. We do have a number of witnesses, as you say, 14 or 15, and I hope that we will have the time to review the testimony of each one of these people and ask them the important questions which have to be asked.

First of all, we have had two hearings on this subject, and there were a number of witnesses, contrary to an earlier statement made, who were not positive about the nominee.

We do have a whole series of very serious questions and allegations about this nomination, not because we are here to find "criminal wrongdoing," that is not the committee's job, but rather because we are here to exercise judgment and to make recommendations to our colleagues in the full Senate in late January or early February.

There are some very serious allegations that have been raised about Three Mile Island, raised about the Fortuna affair, which we heard about a little bit earlier, raised about the Zimmer plant, raised about TVA in 1985, a pattern which I think is extremely serious. Secretary Watkins has come and given us a very clear and strong request that we okay this nomination, saying that there was nobody else for the job. He was the only person that he could find. Well, that is simply, I would say, not the case. There are a variety of other people who are highly qualified for this assignment. And for us to be basing a judgment on the fact that there is nobody else available I think would be a false approach to take.

This Senator would also like to note that he is very aware of the fact that cast across this hearing is the long shadow of John Tower. I understand that there are a number of people who are reluctant to get into a battle with the administration because of their concerns about how the committee would be viewed, and the problems of the big fight that we had with Senator Tower. I understand that and am sympathetic to it. But I would hope that as we get into looking at the specifics of this particular nomination and the issues in front of us that we would be able to separate out that history and be able to look quite specifically at the very specific task that we face. I say that with no joy whatsoever. I think that that is, however, a real factor of the situation that we face here.

Mr. Chairman, I thank you very much. And I would just add, if I might, to your unanimous consent request, I do not know what the plans of the committee are in terms of having a committee report, but I would hope that we might have time, 3 or 4 days after the committee submits the committee report, to perhaps have time to review that and the time to submit alternative views to our colleagues on the floor of the Senate. And I hope we are going to be able to work out whatever time that would be appropriate and necessary.

Senator EXON. Senator Wirth, let me try and explain the way I understand it. Senator Nunn, the chairman of the committee, has asked us to hold these hearings. The staff is going to be working between now and when the Senate reconvenes on all of the testimony that we have had, plus some additional matters that we are looking into.

I believe it is the plan of the chairman for the committee to have an executive meeting of the committee some time during the first week that we are back here. At that time, as I understand it, the chairman is likely to ask the committee what is their feelings on this whole matter. So there is going to be adequate time for any of us to look at anything that we have.

Certainly, all of the hearings, including these hearings today, will be available to any of the Senators, who, because of previous commitments, could not make this meeting here now. And no decision, as far as I know, will be reached immediately after the conclusion of these proceedings today. Senator Warner.

Senator WARNER. Thank you, Mr. Chairman. Mr. Chairman, with great respect to my good friend and colleague from Colorado, I see absolutely, absolutely, no parallel between this proceeding and that held in connection with the distinguished former Senator from Texas, Mr. Tower. The only parallel is that each nominee of the President of the United States is obligated to come before this committee. This committee commits itself to perform an independent, unbiased, unemotional, and objective hearing. And I think we performed that in the case of Senator Tower, and we are now in the process of performing that in the case of Mr. Stello.

I suggested to Mr. Stello that he be present today. I would like to note for the record he is present, and that he is going to be given an opportunity at the conclusion of all the other witnesses to reappear before the committee.

Now the comment also was made by my good friend from Colorado that the Secretary of Energy testified that Mr. Stello was the only one that he could find. We can go back and look at that testimony, but my distinct recollection was, at the time he said it, was that there were other individuals that had an interest, but could not forego their financial remunerations from other sources to take this, comparatively speaking, low-level salary appointment. And therefore it was the salary limitations that precluded a wider range of individuals in expressing an interest in this position. That problem is being experienced throughout government today. And I wanted to add that bit. Thank you, Mr. Chairman.

Senator WIRTH. If I might, Mr. Chairman, just again for the record, if the Senator might yield. I appreciate the comments of the distinguished Senator from Virginia. And I will leave aside the Tower issue; it has been troublesome to the committee, and I appreciate the comments the Senator made.

On the question of availability of people for the job, it has come to this Senator's attention that there are a number of people currently within the Government at the same level of the nominee who have had very distinguished records in the nuclear regulatory area, who have been interested in the job. Also, that there are people on the outside who, although currently are making significantly more money than this job pays, were also interested in this and were, by all accounts that have been made available to this Senator, available and ready to take the job. I say that only because for us to be trying to make a decision on the basis of the statement being made that nobody else was available simply, I think, does not stand up to the evidence. But that is clearly a judgment that Secretary Watkins had to make. That was his opinion in this statement here. I explored that in the last month and have found that, at least to my satisfaction, to not be the case. And I thank the distinguished Senator for yielding.

Senator EXON. Before I call on the witnesses, just let me say that I am not sure that I see any similarity whatsoever between this hearing and the previous hearing of the Armed Services Committee that has been referred to.

Senator WARNER. Mr. Chairman, do you mean the Tower hearing?

Senator EXON. The Tower hearing. The Secretary has made a selection. He has come here and given very strong support for his nominee. It is not in the discretion of this committee, I suggest, to make appointments, we merely confirm appointments that are made if that is our wish.

Therefore, I think we should start out with the proposition that the President of the United States, on the recommendation of the Secretary, has nominated Mr. Stello. And while there may be other people that would or would not take the position at whatever salary, the facts of the matter are that I see the challenge before the committee as simply to decide whether or not we are going to either confirm this nomination as a committee or not confirm it. And that is the reason for this hearing and the ones that have preceded it.

I am now pleased to turn to our first panel of witnesses: Mr. David Gamble, former investigator, Office of Inspector and Auditor, Nuclear Regulatory Commission; Ms. Maureen Gawler, former consultant, Office of Inspector and Auditor, Nuclear Regulatory Commission; Mr. Julian Greenspun, former deputy chief of litigation, Criminal Division, Department of Justice; Mr. Jim McCarten, former investigator, Office of Inspection and Enforcement, Nuclear Regulatory Commission; and Mr. John Sinclair, former investigator, Office of Investigations, Nuclear Regulatory Commission. I understand that two of our panel are now on their way here, and we will certainly entertain their testimony when they arrive. I suggest, Mr. Gamble, we begin with you.

STATEMENT OF DAVID GAMBLE, FORMER INVESTIGATOR, OFFICE OF INSPECTOR AND AUDITOR, NUCLEAR REGULATORY COMMISSION

Mr. GAMBLE. Thank you. I am currently a Federal investigator. I have been employed by the Office of Inspector General of the Department of Defense since it was started in 1982. I am not here in any way representing the Department of Defense or its views.

Prior to 1982, I was employed by the Nuclear Regulatory Commission, from its inception in 1975 until 1982. During the majority of that time, I was an investigator with the Office of Inspector and Auditor, and in that connection I conducted investigations of criminal matters within the jurisdiction of the Nuclear Regulatory Commission and also what I might call internal affairs matters concerning the programs, operations, and employees of the Nuclear Regulatory Commission.

I was requested to appear here today. I have no prepared statement. I am prepared to answer any questions you have.

Senator EXON. Thank you very much, and let me start out by saying we appreciate you and all of the witnesses being here to help us out in this very important matter, and we thank you for appearing today.

Mr. Greenspun, I believe you are next. Welcome, and please proceed with any statement that you have to make as an opening statement.

STATEMENT OF JULIAN GREENSPUN, FORMER DEPUTY CHIEF OF LITIGATION, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

Mr. GREENSPUN. I do not have a prepared statement or an opening statement. I will say very briefly that in the 7 years that I was at main Justice, and I was an Assistant U.S. Attorney for 7 years before that, that a number of things occurred involving Mr. Stello at the Nuclear Regulatory Commission which gave me great pause as a prosecutor and as a civil servant, in terms of who he thought he served, in terms of his candor, and basically in terms of the fact of him being a total bully at the Nuclear Regulatory Commission for people who had slightly differing opinions.

I think that this committee should give great pause, in light of the record that has been developed over many years by Mr. Stello when he did not have this potential nomination in mind, although now with it in mind he is making extensive statements to sort of color the background, that the committee should seriously consider whether nominating this type of person will affect its own credibility in terms of future appointments that it has to pass on with respect to people with even far less problems than he had. Thank you.

Senator EXON. Mr. McCarten.

STATEMENT OF JIM McCARTEN, FORMER INVESTIGATOR, OFFICE OF INSPECTION AND ENFORCEMENT, NUCLEAR REGULATORY COMMISSION

Mr. McCARTEN. I am Jim McCarten. I have been a Federal investigator since 1975. I am currently employed by the Department of Housing and Urban Development, Office of Inspector General. I was employed by the Nuclear Regulatory Commission, Office of Inspection and Enforcement in Region 3, Glen Ellyn, Illinois, from 1979 to 1981. During that time I was involved in the Zimmer investigation and several other investigations.

Based upon my contacts at the Nuclear Regulatory Commission, or my dealings with Mr. Stello, my opening statement consists of that in 1979, 1980, and 1981 while I was at the NRC, the NRC, and specifically the Office of Inspection and Enforcement under Mr. Stello, did not aggressively pursue criminal prosecution of utility officials and their contractors for making false statements and filing false inspection reports to the NRC. I say he did not aggressively pursue them, and that is the end of my opening statement.

Senator **Exon**. Thank you, Mr. McCarten. Mr. Sinclair.

STATEMENT OF JOHN SINCLAIR, FORMER INVESTIGATOR, OFFICE OF INVESTIGATIONS, NUCLEAR REGULATORY COMMISSION

Mr. **Sinclair**. Good afternoon, Mr. Chairman. My name is John Sinclair, and I am the Regional Inspector General for Investigations with the Inspector General's Office, U.S. Department of Commerce, and I am here today as a former Nuclear Regulatory Commission employee, not in that capacity.

Briefly, I would like to say that I have 18 years in Federal law enforcement and major criminal investigations. I was working with the NRC beginning in 1978 and left there in 1987. My two positions that I held were Senior Investigator with the Office of Inspector and Auditor, and Operations Officer with the Office of Investigations. I am here today to answer any questions the committee may have regarding my involvement in particular investigations that were conducted by either of those offices during my employment with the NRC. Thank you.

Senator **Exon**. Mr. Sinclair, thank you very much. Let me ask these questions of the panel. Based upon your knowledge, please describe any circumstances in which Mr. Stello acted in a manner contrary to law or regulation, to your knowledge.

Mr. **Greenspun**. Well, he lied to me for one, Senator, when I first went out from the Department of Justice to the Nuclear Regulatory Commission to find out about this Three Mile Island matter, when this whistleblower Hartman was on public TV and I was dispatched there by high officials of the Department of Justice. So I would call lying a violation of law.

Fortunately, there were people there that could correct the problem on the spot, but had they not been, there may well never have been a Three Mile Island prosecution, and as we know now from that prosecution, while Mr. Stello in substance told me that there were no problems and no violations there, prosecutable violations, we know that the utility pled guilty. That is one matter where I think he broke the law.

Another matter concerns the investigation of Roger Fortuna, which has been well-documented in a number of hearings on the House side. He, under the color of, or the pretext of being involved with that investigation under health and safety potential, which really was not his concern at all, managed to pay $6,000 to $10,000 of the taxpayers' money to buy tapes from this convicted child molester, Douglas Ellison, tapes of conversations between Roger Fortuna and Mr. Ellison which were—there was nothing to them and the U.S. Attorney in Baltimore said there was nothing to them, to Mr. Stello's and Miss Sharon Connelly's great disappointment. They concocted a sham consulting contract to be able to pay Ellison that money after having been told by the Office of General Counsel that it was unlikely that the NRC could approve payments for informants. They paid it out in cash.

I think that statements in that consulting contract, and I have seen it, which he caused to be prepared or played a role in, violated 18 U.S.C. 1001 and maybe some other statutes like False Claims. I see that as a violation of law, aside from being involved in the instigation of a malicious endeavor against another human being, which is even more serious, to my way of thinking.

Now, I know that it has been told by the Department of Energy that they will have him surrounded by many people to make sure he is on the up and up, but the idea of somebody in this position is that he is supposed to keep an eye on lower level people, rather than having this entourage of Department of Energy employees following him around to make sure he does everything in a clean and honest way.

Those are just a few of the examples. It is not merely a question of violations of law. It is sort of like a public official saying, I am qualified for office because I have not been indicted yet. I would hope that that is not what we are looking for in persons with this position.

I do not question Mr. Stello's technical competence. I am not that familiar with his technical competence. I assume it is quite good. But if you are talking about people responsible to the public, responsible, too, for the integrity of the agency, responsible to set an example for other employees, that they act with integrity, quite honestly I think that there are very, very serious problems here. All these people here are not sitting here because Mr. Stello performed his job in a sincere, honest, dedicated way.

Senator **Warner**. I suggest you speak with your own knowledge, and not imply what others may or may not say.

Mr. **Greenspun**. I am drawing an inference, Senator.

Senator **Warner**. I want direct evidence. What is your factual knowledge about this man on which you feel the necessity to come before Congress and state that in your judgment he is not qualified to take this job?

Mr. **Greenspun**. Well, I just gave you two examples.

Senator **Warner**. Is that based upon your knowledge, or hearsay knowledge?

Mr. **Greenspun**. That is based on my knowledge.

Senator **Warner**. Your personal observation?

Mr. **Greenspun**. Yes, absolutely. I was at the Nuclear Regulatory Commission. I will tell you how it happened—because Mr. Sinclair was sitting in the meeting. I went out to the NRC, I think it was in 1981—it could have been 1982, or it might have been 1980—to find out what this Three Mile Island case was about, and Mr. Stello was sitting in a room surrounded by a bunch of folks from the NRC.

Of course, when I took this position a few years later I knew nothing about nuclear power plants. I was not really interested in them. I favored nuclear power, still do. But he proceeds to tell me, when I am trying to find out if there is a real problem here and I learned that leak rates—the leakage of water from the pipes of the utility, were excessive and beyond regulations, he proceeds to tell me well, that was not a real problem. Okay, well, where are the records, the computer runs? Well, the utility apparently got rid of them, he tells me. I said well, how could that be? Were they not required to keep them? He tells me, no. He is corrected at that point by someone who tells me they were required to keep them.

I learned during the course of this meeting that what the utility did was to fool the NRC while it was operating this plant, was to doctor the leak rate tests, to add water to the system so that the computer runs would make it appear that the system was not really losing water. I said well, where are the records of the doctored leak rate tests? I am told they are not required to save them. I could not imagine that, and when he was corrected by somebody that they were required to save them, he proceeded to tell me well, it is too expensive for the utility to save them because there are too many.

I said this is a major utility earning millions of dollars. I do not understand the problem with them saving this paper. He said, it takes a lot of room. I said, how much? The Empire State Building? How much does it take, exactly? He said well, it would take a roomful. I said, and you are telling me the utility is not required to save that, or it is too expensive for them? At that point or right around that point he said, this would be harmful to investigators' morale. At that point I said well, what about the lying and cheating going on? I said, is that good for investigators' morale? To which he did not have an answer, and actually everthing he told me was untrue or misleading, and fortunately he was corrected at the time.

They were required to save leak rate test records. They were not allowed to falsify tests and the Nuclear Regulatory Commission knew, because they talked to Hartman right after the accident, that they were doctoring leak rate records, and he was a high official on the scene at that time, and the investigators who learned this information were told not to pursue Hartman. Just a coincidence, I am sure. That is one example, Senator.

The other example, in the Fortuna case, I know quite personally because I am Mr. Fortuna's lawyer.

Senator **Warner**. Do you have a conflict of interest in view of that?

Mr. **Greenspun**. In view of what?

Senator **Warner**. That you are representing an employee who, as I understand it, was suspended from the NRC for—well, you can state the allegations—and coming before us today, because there is a conflict here between Mr. Stello and Mr. Fortuna.

Mr. **Greenspun**. I am telling you what I know. I do not know that there is a conflict. I do not think there is. Why would there be a conflict?

Senator **Warner**. We will try and develop that when my time comes, but you are representing an employee of the NRC in a private capacity as his lawyer?

Mr. **Greenspun**. Yes, as his lawyer, and I am telling you what the facts are, and I am also telling you that I am his lawyer. I volunteered that. So if you think there is a conflict—I mean, I do not think there is.

Senator **Exon**. My 5 minutes disappeared. Let me just go back to that lie you said you were told. I believe I heard you to say that Mr. Stello said there was no reason to believe that the particular utility did anything wrong. You said afterwards the utility pled guilty to doing something wrong. Could that have been a judgment call on his part rather than an outright lie?

Mr. Greenspun. Well, that is not quite what he told me. He told me—the way it followed was, he told me they weren't required to save leak rate tests, okay? Implying that there was nothing wrong. He, as a technical person and head of the agency, and he was corrected by lower level people right there. In fact, Mr. Sinclair here is the one who corrected him on the spot. It is possible he made a mistake but I think it is highly unlikely and most improbable, especially in light of other things that have happened; other cases. I just mentioned a few; I have knowledge of others.

So I think in light of that—we call that a pattern when there are many incidents like that. I think in light of that, my own view is, that it is highly unlikely. And if that happened then and he didn't know that, of what competence does he have to be appointed to this high position?

Senator Exon. I believe that Senator Exon and Senator Warner each took 5 minutes so I will recognize Senator Wirth.

Senator Wirth. Thank you very much, Mr. Chairman. Mr. Greenspun, a couple of years ago in testimony before the Senate Governmental Affairs Committee, you stated, and I quote from the record:

> Based upon my extensive experience with the NRC and just about every other law-enforcement agency and many of the regulatory agencies, I think I can unequivocally say that I know of no other regulatory or investigative agency where senior agency officials have taken as many bizarre and seemingly deliberate actions intended to hamper the investigation and prosecution of individuals and companies in the industry the agency was suppose to regulate.

Can you tell, was Mr. Stello among the senior agency officials to which you were referring when you made this statement, and, in what ways did Mr. Stello's actions contribute to the hampering of investigation and prosecution of suspected criminal conduct?

Mr. Greenspun. He was the primary official that I was referring to and I think he was the moving force in the agency in that regard, and other people pretty well bent to his will.

I had mentioned the Three Mile Island incident; another case was Nuclear Pharmacy, Inc., one of my first exposures to the NRC. Nuclear Pharmacy was a pharmaceutical company involved in radiology and nuclear radiology, and that sort of thing. And we received a referral from the Nuclear Regulatory Commission to investigate them. I don't recall what the precise parameters of the investigation were. But after the referral, NRC officials had a meeting, and I believe Mr. Stello was involved, with high-level officials from the Nuclear Pharmacy, Inc., at which some damaging concessions were made regarding our case; opinions and conclusions, not necessarily facts. When we found out about that we asked the NRC and Mr. Stello not to have another meeting.

Several months later, as I recall, we learned, after the fact, that he held yet another meeting and virtually conceded away our case, saying that he didn't think they did anything wrong or at least it was ambiguous and so forth. Of course, when the highest, one of the highest officials in the agency concedes that, makes an admission like that, as I am sure he well knew, to the President, that is evidence in the case and virtually the end of prosecution. Which the investigators thought was a good case when they referred it to us. So that was the end of that case.

I learned, in my duties at the Department, that there was a similar problem with the case in New Jersey—I think it was Stepan Chemical Co. I do not recall all the parameters, although I believe it may have been furnished to the committee in documents that were internal memos written to Mr. Stello, highly critical of that.

Another example was he was instrumental in setting up behind the Department of Justice's back, or trying to set up an advisory committee on the rights of licensees, meaning utilities and investigations, which was promoted behind the Department of Justice's back to the utility by a very prominent law firm for the utilities, as a way to develop guidelines which would clearly hamper the ability of the Office of Investigations, or the NRC investigators, to get information under the ruse of an advisory committee.

When we found out about that, and it was done without even contacting the FBI, the Assistant Attorney General sent—of the criminal division, who, I think at that time was either Lowell Jenson or Steve Trott—sent a very scathing letter to the NRC about that, once we were tipped off about it by some lower-level people at the NRC. The long and short of that was, once the cat was out of the bag, so to speak, the advisory committee sort of disappeared into the woodwork.

The Fortuna thing, as I mentioned, which has been well-documented by Congressman Kostmayer and others, as well as Mr. Stello's role, which above all is just targeting an employee for professional ruin. It is just, just incredible to me. Although that was after the Glenn testimony, so that would not have been encompassed within my—when I testified before Senator Glenn 2 years ago, I think it was, the Fortuna incident had not happened yet, although I was out of the Department.

Senator WIRTH. I would like to jump, if I might, Mr. Greenspun, to the question of false data and Three Mile Island. Mr. Stello was in charge of an investigation of the Three Mile Island accident, is that right?

Mr. GREENSPUN. Yes.

Senator WIRTH. And in his report, which was issued in August 1979, there is no mention of allegations by a utility employee, Mr. Hartman, that leak-rate tests had been falsified at Three Mile Island prior to the accident in March 1979. Now first of all, why is the leak-rate data important and why would falsification have been important?

Mr. GREENSPUN. As best as I can recall, the utility, for months before the accident, started losing a lot of water from the cooling system, I think it was, for the reactor. And they worked on this problem, and then, because there were periodic NRC inspections, started adding water to the reactor system to jimmy the results on the computer runs. An NRC inspector, I think his name was Havercamp, stumbled upon this and warned the utility not to do it again. So he knew about 5 or 6 months before the accident of this.

Shortly before the accident, the leak rate, the actual leak rate got even worse, which I understand from talking to the various scientists in this area, was a contributing factor, though perhaps not the sole cause of the accident—this excessive loss of water.

In the NRC's report, the one you just talked about, which I think was called NUREG 0600, they mention at the end in a very, very obtruse way that there were excessive leak rates or a considerable leak-rate loss above NRC regulations for some period before the accident. The report did not mention, and it was buried at the back of the report in terms of numbers, so that it would be very difficult to pick up in terms of its real significance, the report neglected to mention the NRC investigators had talked to Mr. Hartman, the whistleblower from there, right after the accident, who told them: we were doctoring leak-rate tests and we had a terrible problem and it got worse right up until the accident. That is perhaps one of the more significant things to occur, and they knew they did it. They knew that they gagged the Hartman thing so that the public would not find out about this.

Senator WIRTH. Mr. Chairman, my time has expired. I would like to come back and finish the whole leak-rate scenario, which is one of the most important incidents, and we all ought to understand what happened. Thank you, Mr. Chairman.

Senator WARNER. Mr. Chairman, I think I should have at least a minute under that previous time. I think it is important that I clarify the record.

Senator EXON. Senator Warner.

Senator WARNER. I am now reading some of the material provided to this committee relating to the Three Mile Island, or the Hartman case. The allegation was, for 6 months prior to the meltdown, at least one Nuclear Regulatory Commission inspector knew that crucial reactor test data at Three Mile Island was being falsified. TMI information was not included in initial NRC reports and was not reported to Justice Department prosecutors for over 1 year.

Now that is the allegation that has been before this committee and we have examined it. Here are the responses: This matter was investigated by the Department of Justice and the allegations were not substantiated. Following a review of Grand Jury records and testimony, FBI interviews, and Department of Justice and FBI consultation, Assistant U.S. Attorney Rhonda Fields advised that there was insufficient probable cause to believe there was a criminal coverup or that further investigation would show a criminal coverup of this matter.

Specifically, the FBI investigation found that:

First, the evidence does not support a coverup of the Hartman allegations in 1979;

Second, the evidence does not indicate that during 1980 the NRC management withheld or concealed from the Commission and Licensing Board results of the third investigation which revealed that the Hartman allegations had merit; and

Third, FBI interviews of NRC personnel in the examination of pertinent documents revealed that appreciable confusion existed over whether the NRC was instructed by the Department of Justice to resume its investigation into the Hartman allegations.

So the committee has had some testimony on this issue prior to your statements.

Senator EXON. Before any answer, did you say, Senator Warner, that that was committee material that you just read?

Senator **Warner**. It was submitted to the committee and it is a copy of the report.

Senator **Exon**. It is part of a book, is it not?

Senator **Warner**. That is correct.

Senator **Exon**. I do not know who submitted it but I have not seen it previously, and I am not saying it is not relevant, but it is not committee material in the sense that it has been outlined in hearings, is that right?

Senator **Warner**. My understanding is that other witnesses have covered some of these points in testimony.

Mr. **Greenspun**. I don't think that was Rhonda Fields' version. I think that may be Mr. Stello's version or somebody else's version of why nobody was prosecuted for the coverup.

Senator **Exon**. I believe that is from a book written by Mr. Stello, is that right?

Senator **Warner**. The book was put together by the—no. Now, Mr. Chairman, I think we should be cautious here. The book was put together by the Department of Energy and provided to the committee, and so it has the imprimatur of the Secretary and the Department.

Mr. **Greenspun**. Not Rhonda Fields' imprimatur though.

Senator **Exon**. There seems to be some questions on this point. I am advised by various sources that the material just referred to by Senator Warner, while I am not saying it is not material, I believe that it was material submitted by or through Mr. Stello.

Senator **Warner**. At this point in the record, I would like to include the FBI report which corroborates this in its entirety. That's an official document of the FBI.

Senator **Exon**. Without objection, that can be included.

[FBI field office report No. 46A-11367. Document retained in executive file of committee.]

Senator **Exon**. Thank you, Senator Warner. Senator Thurmond.

Senator **Thurmond**. Thank you, Mr. Chairman. Mr. Chairman, I welcome this opportunity to hear from additional witnesses on the qualifications of Mr. Victor Stello, the President's nominee to be the Assistant Secretary of Energy for Defense Programs. I want to compliment the committee chairman, Senator Nunn, and the ranking member, Senator Warner, for scheduling this recess hearing to allow as many witnesses as wish to testify on Mr. Stello's qualifications. I would also like to compliment our distinguished chairman of the Strategic Subcommittee, Senator Exon, for chairing this hearing.

Mr. Chairman, this committee has already heard from many witnesses, and it has been provided extensive documentation both pro and con regarding Mr. Stello. In my judgment, much of the information we have heard is redundant, and much of it relates to instances that were settled many years ago. I trust that this afternoon's testimony will focus on new issues and will not be a repeat of what we have heard previously.

Mr. Chairman, at our opening hearing on Mr. Stello's nomination, Secretary Watkins testified that he has full confidence in Mr. Stello's ability and that he is confident Mr. Stello is the right man for the position. I have carefully reviewed previous testimony and documentation and found nothing that would contradict Secretary

Watkins' judgment on Mr. Stello's qualifications. I believe Mr. Stello has the qualifications and tenacity to meet the difficult challenges facing the Assistant Secretary for Defense Programs.

I also believe that none of the witnesses who have appeared before this committee have been able to give a specific instance in which Mr. Stello was found negligent or where he has misused the power of his office.

I want to quote from a letter dated November 17, 1989, and provided to every member of this committee by Mr. William Briggs, former Solicitor of the Nuclear Regulatory Commission, and I quote, "While I by no means intend to dismiss all of Mr. Stello's critics as disappointed ideologues, many are. You should view the attacks made on Mr. Stello by such people and organizations in full recognition of the fact that they may be quite happy with the current situation of a total shutdown of the Deparment's nuclear facilities. No one who can get those facilities operating will ever be acceptable to these critics of Mr. Stello."

In my judgment, Mr. Briggs has articulated the real issue on the Stello nomination. I, for one, feel we must get our nuclear facilities back into operation and that Mr. Victor Stello is the man who can bring them back on line quickly and safely. Thank you, Mr. Chairman. How is my time?

Senator EXON. You have about 2 minutes left.

Senator THURMOND. I have another engagement and may not be able to stay to listen to all of the witnesses. I have a series of prepared questions that I would appreciate all of the witnesses answering for the record if we do not reach them before I have to leave.

Admiral Watkins, in his statement introducing Mr. Stello to the committee, stated that Mr. Stello has all the technical knowledge in nuclear reactors to qualify him for the position as the Assistant Secretary of Energy for Defense Programs. The question is, do you believe Mr. Stello has the technical qualifications required for the position for which he is nominated? We will start with the first witness, and you can answer yes or no. I do not want to go into a lot of other things now. I am asking you that particular question. Does he have the technical qualifications required for the position for which he is nominated?

Mr. GAMBLE. I do not believe I am in a position to comment on his technical qualifications, sir. I have no basis to judge that.

Senator THURMOND. So, you prefer not to answer that question. Okay. Mr. Greenspun.

Senator EXON. I would say, Senator Thurmond, that Mr. Greenspun in answer to a previous question said that he thought he was technically qualified, is that correct?

Mr. GREENSPUN. Yes, although the position is not one of a technician that he is seeking, but he may be technically competent to do the technical aspects of the job.

Senator THURMOND. So, your answer is yes.

Mr. GREENSPUN. The answer is maybe. I cannot say yes or no for sure.

Senator THURMOND. Mr. McCarten.

Mr. McCARTEN. During my few dealings with him at the NRC, I found him to be technically competent as far as how a reactor operates.

Senator THURMOND. Mr. Sinclair.

Mr. SINCLAIR. Senator, I assume the Secretary of Energy is correct in Mr. Stello's technical qualifications.

Senator THURMOND. Thank you. Thank you, Mr. Chairman.

Senator EXON. Thank you very much, Senator Thurmond.

[The prepared statement of Senator Thurmond follows:]

PREPARED STATEMENT BY SENATOR STROM THURMOND

Mr. Chairman, I welcome this opportunity to hear from additional witnesses on the qualifications of Mr. Victor Stello, the President's nominee to be the Assistant Secretary of Energy for Defense Programs. I also want to compliment the Committee Chairman, Senator Nunn, and the Ranking Member, Senator Warner, for scheduling this recess hearing to allow as many witnesses as wish to testify on Mr. Stello's qualifications.

Mr. Chairman, this Committee has already heard from many witnesses and has been provided extensive documentation both pro and con regarding Mr. Stello. In my judgment much of the information that we have heard is redundant and much of it relates to instances that were settled many years ago. I trust that this afternoon's testimony will focus on new issues and will not be a repeat of what we have heard previously.

Mr. Chairman, at our opening hearing on Mr. Stello's nomination, Secretary Watkins testified that he has full confidence in Mr. Stello's ability and that he is confident Mr. Stello is the right man for the position. I have carefully reviewed previous testimony and documentation and found nothing that would contradict Secretary Watkins' judgment of Mr. Stello's qualifications.

I believe Mr. Stello has the qualifications and tenacity to meet the difficult challenges facing the Assistant Secretary for Defense Programs. I also believe that none of the witnesses who have appeared before this Committee have been able to give a specific instance in which Mr. Stello was found negligent or where he has misused the power of his office.

I want to quote from a letter dated November 17, 1989, and provided to every member of this Committee by Mr. William Briggs, former Solicitor of the Nuclear Regulatory Commission: "While I by no means intend to dismiss all of Mr. Stello's critics as disappointed ideologies, many are. You should view the attacks made on Mr. Stello by such people and organizations in full recognition of the fact that they may be quite happy with the current situation of a total shutdown of the Department's nuclear facilities. No one who can get those facilities operating will ever be acceptable to these critics of Mr. Stello."

In my judgment Mr. Briggs has articulated the real issue on the Stello nomination. I for one feel we must get our nuclear facilities back into operation, and that Mr. Victor Stello is the man who can bring them back on line quickly and safely.

Thank you, Mr. Chairman.

Senator EXON. Senator Gore, you will be next.

Senator GORE. Thank you very much, Mr. Chairman. As I understand the gravamen of the concern some witnesses have expressed about Mr. Stello, they do not run to his technical competence, but rather to his perspective and his judgment.

Mr. Greenspun, earlier you said that when you raised the question of records being falsified and the question of to what extent records had to be kept, that Mr. Stello said they did not have to be kept, but he was then corrected by Mr. Sinclair, is that correct?

Mr. GREENSPUN. That is right.

Senator GORE. Mr. Sinclair, is that the way you remember it?

Mr. SINCLAIR. I was at the meeting with Mr. Greenspun to which he refers. Specifically whether I corrected Mr. Stello on that particular point I actually do not recall at the moment, but let me back up a second.

Mr. Greenspun's recount of what happened in that meeting which took place in about April 1980 is accurate. I was the investigator that was assigned by the then-director of the Office of Inspector and Auditor, Mr. Cummings, to locate Mr. Hartman, who was going to be put on, I guess, a local television program and provide these allegations to the public. I was under the impression that that was also directed by then-chairman John Ahearne that we locate this individual and find out whether or not there was any merit to these particular allegations.

Subsequent to locating Mr. Hartman and over the next several weeks, the I&E staff, an investigator and technical person and myself and another investigator from the Office of Inspector and Auditor, went to the island to verify some of these things and, in fact, came up with the fact that they were throwing away leak rate tests at the island. They had been falsifying some documentation. We came back and reported that to Mr. Cummings, I don't know exactly how it took place, but made contact with the Department of Justice, and I think that is where Mr. Greenspun entered the picture.

We had a meeting at sometime in early April. At that meeting it was being discussed by Mr. Stello that for one thing, even though we were under the impression that there was a violation of license conditions in the operation of the plant, that Mr. Stello was giving the impression that the utility was not required to keep these leak rates which were being discarded and which had already been verified by the investigation, and that we were not actually certain as to whether or not Mr. Hartman was telling us that the definition that he was using of good and bad leak rates was something that we had a firm handle as to whether there was a violation of law.

The point that I did make a correction in that meeting was at exactly that point, and I said that Mr. Hartman had defined exactly what he meant by good and bad leak rates. He had said that while the plant had been operating prior to the accident, when they tried to implement the leak rate tests for the unidentified leakage, that they were having problems meeting the license conditions, and what he said was when they came up with the results that exceeded the license conditions reported to management, they were thrown away. Where the operators were forced to return and either add hydrogen bumping the system or do other manipulations in order to get the results that the supervisors wanted, that, in fact, is what happened up until the time of the accident.

Mr. Greenspun, again, is also correct in the fact that this was ultimately turned over to the U.S. Attorney's office for the Central District of Pennsylvania, and after two grand juries later, there was an 11-count indictment. There was a conviction of the company for all of these said allegations that were brought up by Mr. Hartman.

Senator Gore. Okay. Let me try to cut through some of this because our time is so short. Let me summarize the substance of what has been said and ask you if you agree with the summary and invite you to correct it. A company in charge of managing a nuclear power plant falsified the test records?

Mr. Sinclair. That is correct.

Senator GORE. The tests were designed to protect the public against the possibility of a Chernobyl or a loss of coolant accident that would threaten public safety?

Mr. SINCLAIR. Yes, sir.

Senator GORE. The test results were falsified by the company. You were an investigator in the Nuclear Regulatory Commission, correct?

Mr. SINCLAIR. That is correct.

Senator GORE. And you were present at the meeting where the question of test falsification was brought up to Mr. Stello?

Mr. SINCLAIR. That is correct.

Senator GORE. And Mr. Stello reacted in a way that minimizes the significance of it and falsely stated that the company was not even required to keep the test results on file?

Mr. SINCLAIR. That is also correct.

Senator GORE. That makes one think that Mr. Stello was more interested in making sure that the company was not subject to any punishment or any inconvenience than he was in the protection of the public, which was the purpose of the test and the records. Is that a reasonable conclusion for me to draw?

Mr. SINCLAIR. Yes, sir.

Senator GORE. Now, are you an ideologue, Mr. Sinclair?

Mr. SINCLAIR. No, Senator, I am not.

Senator GORE. Are you a full-time staffer with an anti-nuclear group?

Mr. SINCLAIR. No, sir, I am a career Federal servant.

Senator GORE. What is your present employment?

Mr. SINCLAIR. I am currently with the Inspector General's office in the Department of Commerce. I am the Regional Inspector General for Investigations.

Senator GORE. You are a Regional Inspector General for the Commerce Department under President Bush?

Mr. SINCLAIR. Yes, sir.

Senator GORE. You do not really have an ideological axe to grind, then?

Mr. SINCLAIR. No, sir, I do not.

Senator GORE. You know the position for which Mr. Stello is nominated, and I do not come to this unprepared and I see him in the audience and I have had a chance to meet with him.

I might also say that I have had a chance to visit with some utility officials who feel that while he was not the most popular guy in the world, that he was efficient and did a thorough job. And I have heard both good things and bad things about the nominee, and that is not uncommon.

But I am deeply troubled by the testimony presented by this panel, and I am particularly troubled by your testimony, Mr. Sinclair, because you have—not that the others do not—you all do—I do not mean any implication otherwise, but here you are in the Inspector General's Office in the Department of Commerce, you are in the Bush administration, you are coming here as someone who has no axe to grind, but was present during conversations where public safety was being discussed in intimate detail.

The public would like to see safe nuclear power, but the public is very concerned that the present generation of light water pressurized reactors at least do not meet the standards that the majority would like to see met, and in any event, when the industry is held to safety standards, the American people want to see officials insist that the law be followed and that the regulations be followed. And if someone has a perspective that leads them to ignore the public safety and place a higher priority on the interest of the industry involved, even where the public safety is put at risk, I think that is extremely troubling. I have some other questions for the record, but my time has expired. Thank you, Mr. Chairman.

Senator EXON. Thank you, Senator Gore. We are now beginning our second round of 5 minutes each. I would like to ask each one of you this question. Aside from the Fortuna matter that we have heard testimony on, and aside from the information, basically, from Mr. Sinclair that we just received, about an individual private company pleading guilty to a violation of the regulations, aside from those two matters for a moment, do any of you from your own personal knowledge have any other circumstances in which you believe Mr. Stello acted in a manner contrary to law or regulation? We will start with you, Mr. Gamble.

Mr. GAMBLE. I do not know of anything that I have in addition to what we have discussed—I can support what Mr. Greenspun and Mr. Sinclair have said. I do not know of any other specific situations where I have something directly attributable to Mr. Stello. The majority of the investigations I conducted, which concerned problems and program deficiencies in the NRC, concerned Mr. Stello's office and people under his control, and not him personally.

Senator EXON. Mr. Greenspun.

Mr. GREENSPUN. Other than what I mentioned, I just recalled one other thing. One of the cases that was referred to us at the Justice Department was the Zimmer plant in Ohio, which the NRC was very anxious to get it up and moving, but which apparently had a number of problems. And the investigators in fact were finding terrible problems with the construction of the plant and in falsified records. And I was advised by the investigators and in my role that there was a meeting that Stello attended——

Senator EXON. Now I asked you of your own personal knowledge. I am not going to cut you off if you want to go ahead and describe that, but of your own personal knowledge, not what somebody else told you.

Mr. GREENSPUN. Well, the only way I would know at the Department is what people told me. I did not work at the Zimmer plant, Senator, but they did tell me, and it will just take a second, that Stello told the investigators he does not want to know about false records, he is just interested in the hardware. That is the gist of what I was told. And that was several years ago, also. Maybe Mr. McCarten might know something more about that from a first-hand basis.

Senator EXON. Mr. McCarten.

Mr. MCCARTEN. Yes, sir. I was the lead investigator at the Zimmer nuclear power plant investigation that occurred in 1980. At that time we looked into several allegations. A team of about 15 NRC investigators and inspectors were at the site for several months. What we found—there was a lot of allegations made by an anti-nuclear group and also by quality control inspectors who worked at the plant, who had complained to the plant's resident inspector, Thomas Daniels.

The NRC had a problem with this particular plant because it was 97 percent complete and had been inspected and approved by the NRC; about 90 percent of the plant had been inspected and approved and bought off by the NRC. The investigation team found that the site inspectors were harassed on the job-site, non-conformance reports that were written by quality control and quality assurance inspectors were just stamped void and thrown in a basket. This was a recurring problem that the NRC identified a year earlier.

There were welding problems at the plant, both in the x-ray of critical welds in nuclear safety systems and in common welding that just a regular welder would do. Just welding two pieces of metal together they could not do right.

More significant problems were that they were not controlling the designs of the plant, how the plant was being built. Inspectors went out to the plant. If there was supposed to be a pipe located in such and such a location, it would not be there. Electrical cables would not be there. Design changes had not been controlled.

What we also found, which was most significant, was that there were systemic problems with the NRC's inspection program, in general, under Mr. Stello's purview. We have talked about his technical competence, I may not know much about his engineering competence, but as a manager, this program was under his jurisdiction. We found, the inspection team found, and Mr. Keppler from Region III was very concerned that inspectors had found that there were systemic flaws in the way the NRC was inspecting plants under construction. And Zimmer had pointed that out.

Basically, inspectors would go out, let us say in 1976, when they were pouring concrete, and they would approve the concrete procedure. Years would go buy, the procedure would be watered down, it would move in to what we call a non-conforming state. We were going back to these plants that were 90 percent done and finding a lot of non-conforming work, because our inspectors did not conduct recurring inspections of the work. They checked off an inspection module, said we looked at concrete today, the concrete is acceptable at this plant. They relied on the plant's quality assurance program to maintain the NRC's inspection program. So that systemic problem was found.

There were also criminal allegations made that false statements were made to NRC inspectors who had visited the site in 1979 and 1980 and the site resident inspector, Thomas Daniels, personally told me that the utility had lied to him on several occasions. He was inspecting the operations and start-up of the plant.

There was also concern about the submission of false non-conformance reports—or failure to submit these non-conformance reports to NRC inspectors who were reviewing the plant's operations in 1979.

In March 1980 the first phase in the investigation was complete. In May 1980 Mr. Stello visited the Region III headquarters and met with all of the investigation staff, a lot of the mid-level managers in the region, and was given a briefing by Mr. John Warnik, who outlined all the points that I just covered. He mentioned the systemic problem in the inspection program.

At that point at the end of the meeting, Mr. Stello stood up and said to everybody in the room, well, this is only paper. You have not really shown me any hardware problems. Inspector Schapker stood up and said that he had observed poor quality welding in the plant. Mr. Barrett stood up and said he did not agree that it was just paper problems; these were design control problems. And you can say it is paper, because the paper is not right, or is the pipe on the wall not right? I stood up and I said that I felt that the voiding of the non-conformance reports constituted false statements, and that we should look at criminal prosecution of the individuals who submitted and voided non-conformance reports submitted by the utility's quality assurance inspectors. Mr. Keppler supported the position that the Justice Department be notified about these allegations.

At that point Mr. Stello just turned to Mr. Keppler and said you and I have to talk, and left the room. He was visibly upset over what he had heard. Because we did not agree with the fact that it was just paper, that there were hardware problems.

From November to May 1980, the investigation report was drafted. Mr. James Cummings from OIE was briefed by me personally on the criminal allegations, and that was the end of my dealings.

Mr. Keppler did issue in his investigation report 81-13 in November 1980, and he did say that there seemed to be paper problems, following Mr. Stello's thinking that there were only paper problems at the plant, and that we identified some very minor hardware problems at the plant. That was later found to not be true, because the utility's own quality confirmation program confirmed that there were widespread construction problems at the plant, and the utility withdrew its application for a construction permit from the NRC, and is now converting it to a coal-fired plant.

Some of the ramifications of the program management at the NRC led to the utility abandoning the Marble Hill plant in Indiana, and also the Midland plant was withdrawn, partly for economic reasons and partly for some of the systemic problems that the NRC was having and the utility was having in constructing these power plants. They were all basically 50, 60, 70 percent complete, and they were not sure when they reached that 97 percent completion rate that they would be able to get a license.

Senator EXON. Thank you. My time is up, Mr. Sinclair.

Mr. SINCLAIR. Thank you, Mr. Chairman. In terms of any additional incidents that may be considered violations of law or regulations, I am not prepared to really answer that question right now. I was not notified by the committee that we were going to have to research back and look at what happened. I am just not ready to answer that question of whether I can recall any other violations of regulations or law.

Senator EXON. Thank you. Senator Warner.

Senator WARNER. Thank you, Mr. Chairman. Returning to Mr. McCarten's testimony. Mr. McCarten, did there come a time when the Nuclear Regulatory Commission reviewed the Applegate allegations?

Mr. MCCARTEN. Yes, sir.

Senator **Warner**. And do you know what the findings were?

Mr. **McCarten**. Basically, they were unfounded.

Senator **Warner**. I beg your pardon?

Mr. **McCarten**. Essentially, they were unfounded. Most of the allegations were unfounded.

Senator **Warner**. I understand what you mean, but in other words, the Commission considered them and I am going to read momentarily from an official document.

Mr. **McCarten**. Well, sir, I can tell you, I was the investigator on the case. There were 15 allegations we looked at in great detail. None of them resulted in a civil penalty being issued against the utility. None of them resulted in any significant findings in 81-13, the report. However, the allegations by the site quality control inspectors did result in the imposition of civil penalties and a referral to the Department of Justice of possible criminal violations by the utility.

Senator **Warner**. Let me read from an official document bearing the seal of the Nuclear Regulatory Commission, dated October 27, 1983. It is a memorandum to Mr. Stello from Mr. Palladino; subject, Report to the Chairman on the Applegate Allegations:

> The Commission has completed its review of the report on the allegations of Thomas Applegate and of the comments provided by you and others on that report. I discussed the results of that review as they pertain to you in my recent meeting with you.
>
> The purpose of this memorandum is twofold. First, to state that the Commission is of the view that with regard to the matters covered by the report, you acted in good faith based on your understanding of Commission policy as it existed at that time.
>
> The second purpose of this memorandum is to carry out the wish of the Commission that you receive a clear expression of our continued support and confidence. We appreciate the diligence and candor with which you cooperated in this inquiry. Your input was both helpful in identifying the need for the Commission to clarify its current thinking about handling investigations related to wrongdoing in public health and safety matters.

Now perhaps you are more familiar than I, but it seems to me that this completely exculpates Victor Stello from any wrongdoings under this particular category of allegations known as the Applegate case. Would you agree with that?

Mr. **McCarten**. As far as the Applegate matter is concerned, yes.

Senator **Warner**. Thank you very much.

Senator **Exon**. Senator Wirth.

Senator **Wirth**. You apparently are familiar, Mr. Sinclair, with both Three Mile Island and the Zimmer situation, is that correct?

Mr. **Sinclair**. Yes, Senator.

Senator **Wirth**. What kind of a pattern are we seeing here? Is there some kind of a pattern in how the staff of the NRC operated and, more specifically, Mr. Stello, and what transpired in terms of the "paper problems" at Zimmer?

Mr. **Sinclair**. By pattern, I am not exactly sure what you are asking. I do not see any correlation between the Three Mile Island issue——

Senator **Wirth**. You are not saying there is a correlation between the two?

Mr. **Sinclair**. No.

Senator **Wirth**. I am saying is there the kind of aggressive stewardship of the public safety? Senator Gore asked extensively about

Three Mile Island and the history of the leak record there. There is a lot of other evidence on Three Mile Island, as you know. Mr. Ahearne asked very specific questions of Mr. Stello, if he knew anything about this, Mr. Stello denied it. It later came out that that information had been made available. And there is a pattern at Three Mile Island that goes beyond Senator Gore's questioning.

Mr. McCarten very specifically laid out discussions that were held with Mr. Stello by a variety of individuals who had examined the Zimmer situation. And Mr. Stello, from what Mr. McCarten said to summarize this, said that those were only paper problems, despite the fact that there was clear evidence of design problems, poor quality welding, there had been false statements involved, and so on.

Now it seems to me, looking at both of those, what we are being asked to do, Mr. Sinclair, is to say is this an individual whose judgment we respect? Is this an individual whose judgment has been on the side of the public safety on a steady basis? Is this an individual who should be in this position of enormous consequence to the country at a time when Secretary Watkins and almost everybody in the United States is aware that we are facing a set of very, very significant safety problems surrounding Rocky Flats, Hanford, Savannah River, and so on? Is this the kind of individual whose record would show that he would be looking out for the concerns that my constituents in Denver, Colorado, have next to Rocky Flats, that the people who live around Hanford have, and the people overall would have? That is the kind of pattern that I am asking about, Mr. Sinclair.

Mr. SINCLAIR. Senator, I think you can make some inferences from the statement you just made, but from an investigative standpoint, I would not use Three Mile Island as the pattern. It may have some of the same earmarks or symptoms, but I will attempt to give you an answer to that question.

I was involved in an investigation at the South Texas nuclear project before the Zimmer investigation arose. That was out of another NRC region. I think it was identified as Region IV. The Office of Inspector and Auditor found, and we reported, many of these same types of findings in our report about the inspection program, and some of the things that had been alleged at the South Texas nuclear project, which were potential falsification of records. We did not verify that, but the allegations were there.

There were numerous other things that came up. There were some assaults on inspectors and things that did verify out. There were some inspection reports on that. It ultimately led to the utility shutting down and the issuing of a civil penalty. That was the same situation at Zimmer.

If I were to make a pattern, or make a correlation, I would say that that was something that, we had two instances in two different regions where projects were well along and at some point became scrutinized very thoroughly by the NRC and resulted in the projects stopping.

Senator WIRTH. Based upon your knowledge of Mr. Stello, Mr. Sinclair, do you believe he would be capable of frowning upon, or interfering with criminal investigations of contractors at the Department of Energy, as he apparently did to NRC licensees?

Mr. SINCLAIR. I am sorry, could you rephrase that or just repeat it?

Senator WIRTH. Based upon your knowledge of Mr. Stello, do you believe that he might frown upon, or that he might interfere with criminal investigations of contractors at the Department of Energy, as he apparently did in regard to NRC licensees?

Mr. SINCLAIR. I can say that from my experience at the NRC with investigations, that Mr. Stello did not take kindly to investigations that came up with violations that indicated there might have been wilful or intentional conduct.

Senator WIRTH. From what you know about the Department of Energy, do you think there are some significant investigations that are going to be going on within the nuclear weapons complex?

Mr. SINCLAIR. I do not know the answer to that.

Senator WIRTH. Well, just from the perspective of this committee, that is one of the sets of obligations that we have, and that we have a whole series of nuclear weapons facilities in which there has been a long record of delinquency, probably a lot of very significant, at least challenges to the law, if not violations of the law, by contractors. People have certainly pretended as if there were paper problems only at a number of these plants. There has been a lack of candor to the public, to Congress, to Members of Congress, about the kinds of problems that exist.

Now, presumably, in the face of all of that, we would like to have somebody who has a record, going into the job, of being able to take on the kind of reluctant establishment that we found among the NRC licensees. So that is the parallel that we are drawing.

Why do we go back at this history? Well, we go back at this history because we want to see if the person who is being asked to take on this very important responsibility has a record of aggressive enforcement of the law, aggressive enforcement of regulations, has really pursued the public interest and the public safety. That is why we are asking about all of this past history. We have to form a judgment going from there.

I might ask you, Mr. Sinclair, if you were sitting where we are, would you vote yes or no for Mr. Stello?

Mr. SINCLAIR. I would not be able to endorse Mr. Stello for the position.

Senator WIRTH. Mr. McCarten, do you have an answer for that, if you were asked to vote yes or no?

Mr. MCCARTEN. I would not endorse Mr. Stello for this position.

Senator WIRTH. Mr. Greenspun.

Mr. GREENSPUN. I could not endorse him for this position.

Senator WIRTH. Mr. Gamble, you have not been as involved in this with any kind of a history. I do not know if you have an answer to that question.

Mr. GAMBLE. My involvement, as I said, was more with people working at Mr. Stello's direction and I have seen a similar pattern of not favoring, certainly, criminal investigations, and taking tactics which prevented investigations from reaching a conclusion, and for that reason I also could not support the nomination.

Senator WIRTH. Finally, and I know my time has expired, Mr. Chairman, the issue of a criminal standard has come up, and I do not think we are here judging Mr. Stello against a criminal stand-

ard. Because an individual has not been convicted of criminal conduct, or not been indicted, that is not the standard that we are pursuing. I would like to, if I might, Mr. Chairman, have inserted in the record the letter that came today from Chairman Dingell dated December 19, in part dealing with the issue of indictability versus judgment, and I think on this front it would be relevant.

Senator EXON. Without objection, it will be included.

[The letter referred to follows:]

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC, December 19, 1989.

Hon. SAM NUNN,
Chairman, Committee on Armed Services, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Your staff recently contacted my office to determine my availability to testify before your Committee on Mr. Victor Stello's confirmation. Unfortunately, because of scheduling difficulties, that will not be possible. However, I would like to take this opportunity to make certain observations that may be helpful to your Committee's deliberations.

On August 3, 1989, I wrote to you expressing my views about the fitness of Mr. Stello to assume the important duties of Assistant Secretary of Energy for Defense Programs. I suggested at that time that it might be helpful for the Committee's deliberations that your Committee staff or the Committee review certain regulatory debacles at the Nuclear Regulatory Commission (NRC) and attempt to determine in these matters Mr. Stello's capabilities and effectiveness as a responsible senior official.

I have been following the Senate Armed Services Committee's deliberations on the Stello matter and suggest that the Committee reconsider its apparent focus on the narrow question of whether Mr. Stello is potentially indictable for criminal activities, is guilty of immoral acts, or has otherwise clearly violated NRC regulations. While indictability is certainly an element of the matter that needs to be reviewed, I am sure that you will agree that indictability is not the standard that should be applied in judging whether Mr. Stello should be the person to extract the nuclear weapons establishment from the quagmire into which it has fallen. We have only to look at the Department of Energy to see that the criminality standard is not useful; because, obviously, the mess resulting from decades of mismanagement has led to no indictments.

Several categories of charges have been levied against Mr. Stello: that he maintains a regulatory philosophy leading to regulation that is insufficiently stringent in design and overly loose in enforcement; that in important matters he has displayed bad judgment; that he has often presented information to the Commission, to the Congress, and to the public that is inaccurate and/or incomplete; that he has failed to hold his subordinates responsible for failure to enforce the NRC regulations; and that he has penalized subordinates whose philosophy would lead to stricter regulatory actions than his own philosophy.

While Mr. Stello was not the sole cause of the debacles that have plagued the NRC during this tenure, he was in a position to have defused certain of them before they got out of hand. If he had exercised better judgment, other problems would not have arisen. I believe that if he had acted as a strong regulator, many in the NRC ranks would have followed his lead with the result that the nuclear enterprise would be safer, more economic, and more deserving of the public trust than is, in fact, the case today.

On December 12, 1989, the Senate Armed Services Committee staff requested a meeting with the staff investigators of the various House Subcommittees that had conducted numerous investigations of NRC regulatory failures over the years. Three investigators from my Subcommittee on Oversight and Investigations, who have conducted extensive investigations of both the NRC and the Department of Energy's nuclear weapons program, attended that meeting along with investigators from the Interior Committee and the Energy and Power Subcommittee of the Energy and Commerce Committee. The Senate Armed Services Committee staff has begun to focus on the various NRC fiascoes that could bear on Mr. Stello's fitness as a senior manager. I commend them for this effort. I suggest your Committee review the relevance and implications of the NRC experience to the management of the nuclear weapons program at the Department of Energy—for example, whether the idling of the nation's largest civilian nuclear power program at TVA reflected positively or negatively upon Mr. Stello's effectiveness at the NRC and his ability to do the DOE job.

In the August 3 letter, I suggested that you obtain the documents relative to the Department of Justice's grand jury investigation of the role of senior NRC management, including Mr. Stello, in the Three Mile Island accident and its aftermath. Again, I did not suggest a review of these documents in terms of indictability, but in terms of Mr. Stello's fitness and suitability. Some of the Department of Justice's findings are far from complimentary concerning actions of managers like Mr. Stello. For example, the Termination Memorandum which describes the allegations involving senior NRC management concludes:

"In addition to the grand jury investigation conducted by DOJ, the above allegations have been examined in various NRC and congressional inquiries and investigations. Review of these materials indicates that while NRC management practices throughout the matter put in serious question their competence, judgment and in some instances their truthfulness and ethics, there is insufficient evidence to prove criminal activity."

In addition, I suggested on August 3 that you contact former government officials who might be able to aid the Committee in its effort to evaluate Mr. Stello's management capabilities and his candor. As I mentioned, your Committee staff is now focusing on the serious regulatory failures at the NRC such as the failure to address leak rate falsification at Three Mile Island, the belated discovery of design and construction deficiencies at Zimmer, TVA, and Comanche Peak, the fire protection regulations fiasco described in Congressional hearings by Commissioner Asselstine, and the drug and alcohol abuse issues addressed by the Interior Committee's Subcommittee on General Oversight and Investigations.

After the Senate staff had reviewed the various hearings and reports on these issues, I had hoped they would discuss specific issues with former NRC Commissioners like Messrs. Asselstine and Gilinsky in order to obtain information that would either substantiate or defuse charges that Mr. Stello's management capability and candor were deficient to the point of disqualifying him. However, I have recently learned that the Committee has seemed to solicit general testimony without getting into the specifics of Mr. Stello's shortcomings, a solicitation which tends to place the burden of making a case against Mr. Stello upon the witnesses and therefore discouraging them from appearing. One potential witness who was contacted offered to come to Washington at his agency's expense for a staff interview in an attempt to better determine the Committee's specific interest and how he could be helpful. He was turned down by the staff. I believe that this is unfair to these witnesses who could be helpful if there was a better focus to the Committee's review.

If Mr. Stello is confirmed, his decisions will have great weight. Whether such decisions are the appropriate ones will be difficult or impossible for the Congress to determine. The potentially catastrophic results of bad decisions in the nuclear weapons program may not appear until decades into the future, long after the present players have left the field. For this reason, the Assistant Secretary for Defense Programs must be a person whose integrity and judgment are beyond question. The evidence indicates that Mr. Stello does not fit the bill.

I recognize that a considerable effort must be expended in order to conduct a thorough review of the record. The amount of effort required is even greater for those not familiar with the NRC's sorry regulatory history. In writing to you on August 3, I had hoped to facilitate the process of examining Mr. Stello's qualifications.

Sincerely,

JOHN D. DINGELL,
Chairman, Subcommittee on Oversight and Investigations.

Senator EXON. Thank you very much, Senator Wirth. Senator Thurmond.

Senator THURMOND. Thank you, Mr. Chairman. I would like for each of you to answer this question. I think you can do it very briefly. Mr. Stello has served on the Nuclear Regulatory Commission and the Atomic Energy Commission since 1965. During those 24 years, he has faced many challenges and has been the subject of many investigations. Are you familiar with the entire career, and are you aware of any punitive or legal actions taken against him as a result of any investigations into his activities.

Mr. GAMBLE. I am familiar only with his career from 1979 to 1982, and no, sir, I am not familiar with such actions taken against him.

Mr. GREENSPUN. Taking that whole question as one question, the answer is no, I am not familiar with his career.

Senator THURMOND. Mr. McCarten.

Mr. MCCARTEN. I am not familiar with Mr. Stello's entire career, just the years I dealt with him.

Senator THURMOND. Well, are you familiar with any punitive or legal actions taken against him as a result of any investigation into his activities?

Mr. MCCARTEN. No.

Senator THURMOND. Mr. Sinclair.

Mr. SINCLAIR. No, Senator, I am not familiar with any punitive actions taken, nor Mr. Stello's entire career.

Senator THURMOND. Regardless of your personal experience or feelings with regard to Mr. Stello, I want to ask you this question: do you believe our Nation needs to restart its nuclear weapons facilities? Mr. Gamble.

Mr. GAMBLE. My personal opinion on that is absolutely, yes.

Senator THURMOND. Mr. Greenspun.

Mr. GREENSPUN. Yes, I do, and I think we need more nuclear power plants, Senator.

Senator THURMOND. Mr. McCarten.

Mr. MCCARTEN. Yes, I do agree we need to get the nuclear weapons plants operating.

Senator THURMOND. Mr. Sinclair.

Mr. SINCLAIR. Yes, Senator, I agree we have to restart the plants.

Senator THURMOND. Those are the only questions I have, Mr. Chairman.

Senator EXON. Thank you, Senator Thurmond. Senator Kennedy is next.

Senator KENNEDY. Mr. Chairman, I will not ask any questions of the panelists. I think it has been a very revealing and powerful testimony. They are looking at a series of instances where important health and safety issues were raised. How they were addressed under both the authority of Mr. Stello and those that were responsible to him has to be a matter of enormous concern and distress to this committee and I would think to our colleagues in the Senate, and I have appreciated their response to questions and I think also their candor. I think this is a matter of enormous consequence, as has been pointed out, and I think it has been very helpful testimony, and I have no further questions.

Senator EXON. Thank you, Senator Kennedy. We are now going to have a final round of questions of 3 minutes each, and that will finish this panel. I would like to tell each of you that there will undoubtedly be some questions that we will submit to you for the record, and I would like you to please respond as promptly as you can to those questions and we will try and keep them as short as we possibly can. I also would like to acknowledge that Miss Gawler could not be here. If she has an opening statement, I would ask unanimous consent for that to be included in the record as if she were here to deliver it, if that is her wish, to submit such a record.

Senator **Exon**. My last question, and I wanted to ask each of you this question, and listen very carefully: you each feel, do you not, that during Mr. Stello's watch at the NRC, he appeared to you to be generally not as supportive of inspections and following the regulations as you would have liked? Is that a true reflection of your position, and if you could, yes or no, unless you care to amplify?

Mr. **Gamble**. Speaking with respect to Mr. Stello and his personnel and their opinion and their dealing with investigations, which is all that I am familiar with, I would have to agree with your statement that they were not supportive of investigations and in many respects worked counter to investigations that were underway.

Senator **Exon**. Mr. Greenspun.

Mr. **Greenspun**. My experience also was that he was not supportive, and that they really were not tough with the licensees in making the licensees toe the line, and if they were tough with them I think a lot more plants would be open today that had to be closed once the truth came out about shoddy workmanship and bad records, and so forth.

Senator **Exon**. Mr. McCarten.

Mr. **McCarten**. Yes, Senator Exon. I worked under the region III staff under Mr. Keppler. I found Mr. Keppler to be very supportive and aggressive in pursuit of the regulatory program in region III. My experience at the meeting that I documented earlier was my only experience with Mr. Stello, and it was a very negative one.

Senator **Exon**. Thank you. Mr. Sinclair.

Mr. **Sinclair**. Yes, Senator. In responding to your question I would like to speak not to inspections, but specifically to investigations, and during the time we were doing investigations at the NRC, specifically to identify regulatory violations which would be considered willful and intentional, and calling for stricter enforcement action, I have to say that I do not think that the NRC was pursuing that aggressively. It was not a matter of my personal feelings, or whether I thought that should be done. It was a standard that they were identified as willful and intentional violations.

Senator **Exon**. Having said what you have just said in answer to that question, do you hold Mr. Stello exclusively and in his own name, in carrying out his duties, for the failures that you outlined that have concerned you today, do you think he was carrying out his own agenda, or was he carrying out the agenda of the Commission for which he worked? My question, therefore, goes to the situation: was it only Mr. Stello that gave you concern, or was it the whole Commission, the Commission that called the shots under which he operated as the chief executive officer?

Mr. **Sinclair**. I do not know the answer to that, Senator, whether other members of the Commission were making any changes in the direction. I only can speak to what I have already testified to and my specific involvement.

Senator **Exon**. Mr. McCarten.

Mr. **McCarten**. I only had one dealing with him, which was the Zimmer case, and I felt—could you repeat the question?

Senator **Exon**. My question was, because of the concerns that you and others have expressed here today, do you feel that these were exclusively the actions of Mr. Stello alone, separate and apart from the individual and total members of the Commission for whom he worked?

Mr. McCarten. In the meeting that I had with him, I felt that he was acting on his own behalf. There were systemic problems in the NRC that I have outlined that you could not attribute to one individual.

Senator Exon. Mr. Greenspun.

Mr. Greenspun. Thank you, Mr. Chairman. It is my understanding that it goes both ways. There were commissioners very sympathetic with his views, although perhaps not the technical knowledge, and others who were middle-of-the-roaders. It is my understanding that by sheer force of his forceful personality, which Mr. Stello does have and which he has admitted to have, that he had a great influence upon them, and so I suspect that it is some of both and perhaps maybe 70 percent on his side. He was like the chief operating officer there, and they relied greatly on him to tell them what to do. Although they may have sympathized with his views, he carried out the orders.

Senator Exon. But the ultimate responsibility would belong to the Commission, is that right?

Mr. Greenspun. Ultimately, that is true, Senator.

Senator Exon. Mr. Gamble.

Mr. Gamble. I do not think I can really elucidate this any further. Mr. Stello—in many instances I have seen him act on his own, directing his people, and in other instances, if there were other forces, such as the commissioners, I would not have been aware of that.

Senator Exon. Thank you. My time is up. Senator Thurmond.

Senator Thurmond. I have no more questions for this panel, Mr. Chairman.

Senator Exon. Senator Warner.

Senator Warner. I have no further questions for this panel.

Senator Exon. Senator Wirth.

Senator Wirth. Mr. Chairman, I have no further questions. I want to thank this panel. I particularly want to thank the three gentlemen who are in the career service. All of you are career civil servants: Mr. McCarten, Mr. Sinclair, and Mr. Gamble. I really respect your views in coming forward in the way that you have. And whether one agrees or disagrees on the Stello issue, I think we all respect the professionalism and the care with which all of you came and spoke. And that is, I think, a very good tribute to the excellence of our career civil servants. And I hope we are going to be capable of strengthening it in the kind of model you all have set. Thank you very much for being here. Thank you, Mr. Chairman.

Senator Exon. Thank you, Senator Wirth. Senator Kennedy, any further questions?

Senator Kennedy. No, Mr. Chairman.

Senator Exon. Gentlemen, that ends this part of the panel. As chairman, I want to thank you very much for coming here. You have been very helpful, and you have been responsive to the questions. And we thank you very much for coming and helping us out. You are excused.

We will now call the second panel. Mr. Harold Denton, director of the Office of Government and Public Affairs for the Nuclear Regulatory Commission, and Mr. William Parler, general counsel for the Nuclear Regulatory Commission. Gentlemen, we thank you very much for coming here today. I think you have both been here to listen to the testimony thus far. We are looking forward to your testimony. If you have printed statements that you have prepared, I would without objection announce that as of now those are included in the record; and I would ask each of you to summarize briefly in about 5 minutes, if you could, your statements. And then we will go to questions. We will start with you, Mr. Denton.

STATEMENT OF HAROLD DENTON, DIRECTOR, OFFICE OF GOVERNMENT AND PUBLIC AFFAIRS, NUCLEAR REGULATORY COMMISSION

Mr. DENTON. Thank you, Mr. Chairman, Senators. I have known Vic Stello since he first joined the Commission. I remember he was a project manager for the Oyster Creek facility. He probably asked more questions of that utility than any other project manager we had had at that time. He worked for me at the time of the Three Mile Island accident. He and I spent many days together at Harrisburg. After that he was promoted to be head of the Office of Inspection and Enforcement. We have had somewhat parallel careers in the NRC. I am here at request and would be prepared to answer any questions.

Senator EXON. Thank you. Mr. Parler.

STATEMENT OF WILLIAM PARLER, GENERAL COUNSEL, NUCLEAR REGULATORY COMMISSION

Mr. PARLER. Mr. Chairman, I am a Federal career attorney for the past 30 years. Since July 1, 1986, I have served as the general counsel to the Nuclear Regulatory Commission. I have also known Mr. Stello throughout his service and have known him and worked with him very closely for the last 5 or 6 years. I found Mr. Stello to be a dedicated public servant and a tireless worker. I do not have a prepared statement, Mr. Chairman. I am here at the request of the committee and I will be pleased to answer whatever questions the committee puts to me.

Senator EXON. Thank you very much. You have described your background and experience in this area. Let me ask you a few questions, if I could, to try and place it into proper perspective, the testimony you will give. Mr. Denton, what is your general view of Mr. Stello's level of expertise on the issues that would come before the Assistant Secretary of Energy for Defense Programs?

Mr. DENTON. I think he would be an excellent candidate, Mr. Chairman. I worked at the Savannah River plant in Senator Thurmond's backyard 25 years ago. I know some of the problems there, and I know Mr. Stello's technical background and character very well. And I would highly recommend him for that job.

Senator EXON. Mr. Parler.

Mr. PARLER. Mr. Chairman, I have already commented about my impressions of Mr. Stello over a period of many years as being a dedicated public servant, a tireless worker. It is my impression, certainly in the 1970s and the 1980s, that among his technical colleagues he is respected as an expert in the area of nuclear safety.

Senator EXON. What can you say about his managerial skills? Good, bad, controversial? Certainly, you would not describe it as noncontroversial so we will leave that question out. What do you think of his managerial skills overall, Mr. Denton?

Mr. DENTON. Mr. Chairman, Mr. Stello is able to juggle more balls than anybody I know in terms of the difficulty of the issues that he is able to handle. He does challenge people. He challenges the technical staff; he would challenge me on my views; he would challenge the commissioners; and I think he would challenge the investigators. But that is his style. If you convince him that you have a sound, objective argument, he supports you. I never had any significant differences of opinion with Mr. Stello in my entire career with him.

Senator EXON. Thank you. Mr. Parler.

Mr. PARLER. My impression is, Mr. Chairman, that he is a strong, aggressive manager. He is interested in getting things done. And in the area in which we have worked for many years, if you want to get anything done, you have to be that way.

Senator EXON. Based upon your personal knowledge, please describe any circumstances in which, to your knowledge, Mr. Stello acted in a manner contrary to NRC policy.

Mr. DENTON. I do not know of any, Mr. Chairman.

Senator EXON. Mr. Parler.

Mr. PARLER. I am not aware of any, Mr. Chairman.

Senator EXON. Let me ask you, Mr. Parler, because I am sure this is going to come up. The Fortuna matter that has come up with the previous panel—how early were you brought into this? And did you advise Mr. Stello, pro or con, on whether or not the alleged $6,000 was paid to the supposed informant? And what was Mr. Stello's attitude when you told him, if you did, that there may be some concerns about the way this was handled?

Mr. PARLER. I never told Mr. Stello after I learned what had happened, that there had been some concerns about what had happened.

My involvement in the matter that you have referred to—which incidentally is the only one of the series of things that the first panel talked about—that happened on my watch. My involvement in that started on August 25, 1988. The then-director of the Office of Inspector and Auditor asked me whether she had the authority to pay money to an informant. I told her that I did not think that such authority existed. And that in any event, that was a significant policy question for the Commission to decide.

On that date I wrote the then-director, Mrs. Connelly, a memorandum to that effect. On the following day, to the best of my recollection, I believe August 26, Mrs. Connelly and I met in Mr. Stello's office. There was some brief discussion. I summarized the essence of my memorandum. My recollection is that I was told by Mr. Stello that indeed a technical person had looked at the information involved. And that it could have safety significance.

Consistent with the legal advice that I had given, if you had such a situation, and you could not get the information voluntarily, and you could not subpoena the information, I advised Mr. Stello that it would be legally appropriate, or he would have the legal authority, I should say, to contract for the information through the provision of consultant services, which they had suggested. Mrs. Connelly, it is my recollection, and Mr. Stello indicated that there was an individual whose services they also needed as a consultant to help them go through this information.

So, as far as I am concerned then and now, they had the legal authority at least to enter into the contract. However, I must add that in the other body at a public hearing and also before the staff of another committee in this body, I have expressed the view, that had I known a couple of things, I certainly would have given different advice. Or to put it another way, because of past history, I disagreed substantially with the judgment. And I do not know who the judgment was exercised by, whether it was the former director of the office, or the executive director for operations, Mr. Stello at the time, to have an investigation initiated within the Nuclear Regulatory Commission by these individuals against the employee, Mr. Fortuna.

Because of the past history of tensions, the lack of mutual respect between the investigative officers, and I think from what you heard from the first panel, at least as far as investigative matters are concerned, Mr. Stello was viewed by certain people as being controversial.

I also disagreed with the judgment to contract with the individual as a consultant, because of what I subsequently learned about the individual's past qualifications or the lack thereof. If anybody has a consultant contract with the Government, the person's credentials, it seems to me, should be not nearly as controversial as this individual's was, the consultant contractor.

And so I disagreed with the judgment that was exercised in these two respects. I stick by the memorandum that I wrote, that there was legal authority to enter into the contract.

Senator **Exon**. My time is up. I have one final question, which I think will be a relatively short one, as far as the answer is concerned. Can you describe any circumstances or any happening or any event during your years of association with Mr. Stello that in your opinion would demonstrate that he should not be confirmed for the position of Assistant Secretary of Energy for Defense Programs? Mr. Denton.

Mr. **Denton**. My impression is exactly the opposite. I think public health and safety have been his compass for the time I have known him. So I would fully support him for that position. I know of no situation that would disqualify him for that post.

Senator **Exon**. Mr. Parler.

Mr. **Parler**. My answer is the same as Mr. Denton's. I might add that over a period of many years, even though I have reached different judgments about a variety of things with many individuals within the agency, within the Government, and personally, that is the only significant instance in which my judgment has differed with Mr. Stello's—to the extent that he personally may have been involved in either aspect of what I just talked about: either the initiation of the investigation against Mr. Fortuna, or the letting of the contract.

Senator **Exon**. Thank you, Mr. Parler. I would remind all that you are an attorney. And if you ever have known an attorney that you always agreed with, there is probably something wrong with either you or the attorney. It is part and parcel of your profession to point out the ills and the pros and cons. Thank you very much. Senator Warner, you are next.

Senator **Warner**. Thank you, Mr. Chairman. I want to touch on this question of public health and safety. That goes to the very heart of nuclear power. It is of enormous concern to our citizens and justifiably. And frankly, I think the person that is going to fill this job should be a good tough hombre. The old saying, nice guys finish last, well, there is no place for them in the nuclear industry. We want only the toughest and the best trained. Fair, yes, and honest, yes. But a witness on the prior panel said that Victor Stello bullied people. Now how many years have you been in the NRC, Mr. Denton?

Mr. **Denton**. I have been there over 25 years, Senator.

Senator **Warner**. You have seen a lot of people in that agency and a lot of people in public service. And so I think you have a basis upon which to make your judgment. Did you ever see Victor Stello bully anybody?

Mr. **Denton**. I have seen Mr. Stello challenge people. And I think perhaps because of his physical size, that may come across as bullying. But I have never seen him bully anyone. But he does force people to explain the basis for their actions.

Senator **Warner**. Do you agree with me that we ought to have a tough hombre in this position?

Mr. **Denton**. Yes, sir.

Senator **Warner**. Mr. Parler, how about you? Do you agree we should have a good tough person in this position?

Mr. **Parler**. I certainly would assume so, Senator, from what I have read about the position in the paper. I am not an expert on the position.

Senator **Warner**. How long have you been with the NRC?

Mr. **Parler**. Since 1959.

Senator **Warner**. Did you ever see him bully anybody?

Mr. **Parler**. Mr. Stello is a strong, aggressive, no-nonsense manager on the one hand, and at other times, when the situation calls for it, he is the most respectful person about people's problems, et cetera. I have heard about the bullying because I had to sit through hearings in 1987 when those charges were made. But he is tough, he is strong.

Senator **Warner**. Did the charges pan out?

Mr. **Parler**. Not to the best of my recollection. I do not believe so. Maybe others have information that I do not have. But none of them panned out that I know about.

Senator **Warner**. Given the length of time each of you have been involved in this industry, you undoubtedly are familiar with individuals who have gone through the training and have gone into the private sector, and the type of salaries and so forth that they are making.

I want to refer to Admiral Watkin's testimony, when he came up to introduce Victor Stello. And on page 58 of our transcript, he states as follows:

This is the toughest job I have. This is two-thirds of my budget. This is everything in nuclear deterrence, so I canvassed the Nation and I was able to come up with five people who had the credentials, including Victor Stello.

The others dropped off the list; they would not serve because of the pay issue, and I don't blame them. They could not serve because they could not make it here—presumably "here" being in Washington in Government service—financially. Do you have a knowledge of the inventory of individuals out there comparable to Vic Stello in terms of experience and training, Mr. Denton?

Mr. **Denton**. Yes, sir.

Senator **Warner**. Do you think there is a whole lot of them that are sitting on the edge to come to Washington to take this job at this pay?

Mr. **Denton**. I think if they came they would not take it for the money, Senator.

Senator **Warner**. They would have to take it for other reasons?

Mr. **Denton**. The salaries seem to be significantly higher in the commercial sector in this area than they are in the governmental sector.

Senator **Warner**. How about you, Mr. Parler, do you have any background with which to deal with this question of whether the Admiral did a thorough job in canvassing the available pool of applicants?

Mr. **Parler**. I certainly would not want to comment one way or the other on the thoroughness of the job that the Admiral did because I know nothing about it. But I would like to add that, if Mr. Stello's motivation was money and not public service, in my judgment, Mr. Stello would have departed for the private sector some considerable time ago. So I do not know what others there might be out there or what their motivations would be, but over a period of many years, I certainly have an opinion about Mr. Stello's motivation and that is toward public service.

Senator **Warner**. But to your knowledge, people with his qualifications and background, making what sort of salaries out in the private sector?

Mr. **Parler**. I do not have the slightest idea except that it is considerably more than the ceiling for the Government.

Senator **Warner**. Do you, Mr. Denton, do you have any knowledge?

Mr. **Denton**. Well, I think people in a comparable position in industry are making twice his salary or more.

Senator **Warner**. Twice his salary or more. I thank you very much.

Senator **Exon**. Thank you, Senator Warner. Senator Wirth.

Senator **Wirth**. Thank you very much, Mr. Chairman. And gentlemen, thank you for being here. Mr. Parler, have you ever had any reason to mistrust Mr. Stello?

Mr. **Parler**. Not mistrust in the integrity sense but as I have told others, if anybody sits down with me again to talk about consultant contracts in lieu of informants funds to conduct an investigation, I certainly would be very suspicious about it and would ask questions which I did not ask. I am an experienced person; I could have asked these people questions and I did not do it.

Senator **Wirth**. And as you stated to Senator Glenn's committee, the fact was that Mr. Stello did not give you all the facts, is that correct?

Mr. **Parler**. I do not know whether he knew all of the facts but certainly I did not know the type of information that they were after; who the individual was that they were investigating.

Senator **Wirth**. You were not given all that information even though Mr. Stello had it all?

Mr. **Parler**. I do not know that he had it all. Either he or Ms. Connelly had it.

Senator **Wirth**. Well, I think the record will show that he did have it all.

Mr. **Parler**. Well, that might well be true, Senator, but I do not know that.

Senator **Wirth**. I just wanted, for the record, to point out that in fact that is the case, and he did not give you all of the information. Had you ever done a consultant contract like this before? Is this something that is often done at the NRC, this kind of consultant contract?

Mr. **Parler**. In the context of an investigation? I had a vague recollection that in connection with one of the Louisiana plants that there was a consultant contract but it was for a different purpose, as I understand it. I am not familiar with all of the details.

Senator **Wirth**. But you do not know of any other consultant contracts that were given like this?

Mr. **Parler**. This one is a question of a first impression to me. It is a unique situation. I do not know of any others.

Senator **Wirth**. So you do not know of any other ones like this?

Mr. **Parler**. No, sir.

Senator **Wirth**. And he did not give you all of the information? I just want to make sure we get as straightforward answers as we possibly can.

I think it would be useful, Mr. Chairman, to include in the record the information from the Governmental Affairs Committee, the August 1989 report, from the middle of page 14 through the top of page 15, which outlines quite specifically the committee's findings on the discussion that Mr. Parler and you had in your earlier discourse.

[The information follows:]

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SERIOUS PROBLEMS CONTINUE IN THE NUCLEAR REGULATORY COMMISSION'S INTERNAL INVESTIGATIONS

REPORT

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

AUGUST 1989

Printed for the use of the Committee on Governmental Affairs

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fund. Connelly was advised to clear the matter with the General Counsel and that Commissioner Rogers was Acting Chairman while Zech was in the Soviet Union.[98]

On August 26, Chairman Zech received a phone call in the Soviet Union from Commissioner Rogers concerning Connelly's request to establish an informant's fund. Zech and Rogers agreed that the General Counsel should be consulted.[99] On September 2, when Chairman Zech returned from the Soviet Union, he learned from Parler that, during Zech's absence, Connelly had initiated an investigation that she and Stello believed might have safety implications based on a limited technical review.[100] (When he spoke to Chairman Zech, Parler did not know of the trip to Florida made by Blaha, Connelly, and Resner on August 29).[101]

At Parler's suggestion, Zech questioned Connelly about the investigation. On September 2, Connelly told Zech that the consultant contract had already been signed and that the investigation involving Fortuna was proceeding.[102] This was the first time Zech knew Fortuna was a target and that tapes were involved. Connelly did not provide Zech with particular facts concerning Ellison such as his legal problems.[103] Upon learning that Parler had not been informed of the details or subject of the investigation, Zech directed Connelly to brief Parler.[104] That briefing took place on September 2 as well.

It appears that at no time during these conversations with the Commissioners' offices did anyone raise the subject of using a subpoena to obtain information from Ellison.

9. OIA's Third Contact with Office of General Counsel

According to Parler, on September 2, 1988, Connelly did not share a great deal of specific detail about the investigation, and she named only one NRC employee as the subject of the investigation—Fortuna.[105] Parler also recalled that although Ellison's name was mentioned during the briefing, Connelly did not share any information about Ellison's background with him, such as the fact that he had pleaded guilty to a sexual misconduct charge.[106]

Parler, aware of a history of problems over OIA investigations of OI personnel and of problems between Fortuna and Connelly, which will be discussed, supra, immediately warned Connelly that she would be viewed as being vindictive. He said that the "worst combination" that could have been put together was Stello and Connelly investigating Fortuna; that Connelly was starting with "unnecessary excess baggage" at the outset because of the history of tension between OIA and OI; and that she might find a logical explanation for Fortuna's behavior with individuals outside the NRC. Parler also recalled that when he learned that Fortuna was the real target, and it was Connelly and Stello who were in charge

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[98] Ibid.
[99] Ibid.
[100] Ibid.
[101] Ibid.
[102] Ibid.
[103] Ibid.
[104] Ibid.
[105] Interview of Parler by GAC staff.
[106] Ibid.

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of the investigation, he advised the Chairman's office that it was a "no win" situation for the agency.[107]

When questioned about this matter in April, 1989, Parler stated, "Had I known on August 25, 198[8], what I subsequently learned in recent months I would have urged the Agency to proceed with the issuance of a subpoena if indeed the information was needed for a valid regulatory purpose." [108] In Parler's view, there was no legal impediment to the issuance of a subpoena. He further indicated that had he been told all the facts about Ellison, he would have changed his advice about the feasibility of the contract because when one is dealing with a consultant, in his opinion, one must deal with someone who is "responsible and credible".[109]

10. Past Friction Between OIA and OI, and Connelly and Fortuna

In 1987 this Committee held a hearing concerning the NRC which disclosed a level of personal animosity among senior NRC managers. For example, the head of OI, Ben Hayes, Fortuna's boss, testified that Victor Stello, Jr., the NRC's top staff member, shook his fist at the OI director in a threatening manner accompanied by threatening words. *See* S. Hrg. 100–140 at 42 (100th Congress, 1st Session). Similarly, the Committee's investigation revealed a significant degree of tension, distrust, and dislike between some officials of OIA and OI.

Blaha testified that he heard Connelly say about Fortuna, after listening to his voice on an Ellison tape recording: "that's Roger, you know, a wheeler-dealer type thing." [110] Blaha was generally aware of a tension between Connelly and Fortuna prior to the beginning of the investigation, and he stated, "I do know that Sharon Connelly was concerned about the appearance that it be some sort of retribution on her part." [111] Connelly, on the other hand, maintained during her testimony that she doesn't recall having had any concerns about the appearance of impropriety.[112] Blaha did not know why Connelly hadn't recused herself entirely to avoid any appearance of improper motive on her part for investigating Fortuna.[113]

One former OIA investigator, Maureen Gawler, who did not leave under circumstances which would prejudice her testimony and whom the Committee found highly credible, told the Committee that numerous OIA investigations of OI employees or supervisors were: "(1) arbitrarily opened; (2) pursued with tremendous personal vengeance; and (3) very seldom had a basis in law or fact." [114] Ms. Gawler claimed OIA Director Sharon Connelly's "disdain" for certain OI supervisors, including Fortuna was "legendary." [115] In her deposition Sharon Connelly denied she had such feelings about Fortuna. However, the OIA Deputy Director agreed that "Sharon Connelly is not very fond of some of the people in

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[107] Ibid.

[108] Ibid.

[109] Ibid.

[110] Blaha deposition at 81.

[111] Ibid., at 81, 82.

[112] Connelly deposition at 141.

[113] Blaha deposition of James at 81,83.

[114] Interview with former OIA investigator by GAC staff.

[115] Ibid.

Mr. **Parler**. And, Senator, that is an accurate description of the discussions that I had——

Senator **Thurmond**. Mr. Chairman, may I ask a question? Has that been filed with the Senate yet?

Senator **Wirth**. Oh, it was printed in August 1989, Senator Thurmond.

Senator **Thurmond**. I understood it had not come to the attention of the minority.

Senator **Wirth**. Well, it is a report of the Committee on Governmental Affairs, the U.S. Senate. I can only assume and I would be happy to ask. I would assume that the minority would have looked at all of this, right? Is there any problem?

Senator **Thurmond**. I do not object. I was just asking a question.

Senator **Wirth**. Thank you, Mr. Chairman. Let me ask you if I might, Mr. Denton, you said earlier in your discussion with Senator Exon that you, "never had a serious disagreement with Mr. Stello." Is that a fair characterization?

Mr. **Denton**. Yes.

Senator **Wirth**. I am not a reader normally of Inside NRC. I am sure that there are a lot of people who are but it is one of those publications that has escaped me overall. But I have, in preparation for this, seen a number of editions of it. And in the January 5, 1987, Inside NRC edition is quite an extensive discussion of disagreements between you and Mr. Stello on Mark I containments. Can you describe to us what that disagreement was?

Mr. **Denton**. I think, after the Chernobyl accident, I became concerned about the adequacy of the Mark I containment and began to urge industry to consider voluntarily certain improvements in that containment. I think Mr. Stello did not agree fully that these would be effective or they would be cost effective. We went round and around, the net result today, I think, is that 19 of the Mark I owners have agreed to make the types of changes that were considered back then.

Senator **Wirth**. And you wanted more aggressive safeguards, is that right, and Mr. Stello wanted less aggressive safeguards, is that a fair summary?

Mr. **Denton**. Yes, in that case. We have had other disagreements where Mr. Stello wanted more than I thought necessary. So when I say "serious disagreement," I mean the type that I lost sleep over.

We often would have different opinions and different approaches to matters, but I wanted to put it in the broadest context of the 24 years. I would be quite comfortable with Mr. Stello making safety decisions for the Department of Energy. That is not to say that he and I did not differ now and then over the details of the commercial program.

Senator **Wirth**. What was the situation in 1985 at the TVA nuclear program? You, at that point, were Mr. Stello's deputy, is that correct, Mr. Denton?

Mr. **Denton**. No, sir, I was director of the Office of Reactor Regulation at that time.

Senator **Wirth**. Director of the Office of Reactor Regulation.

Mr. **Denton**. And I reported to Mr. Stello.

Senator **Wirth**. You reported to Mr. Stello. Okay, and there was a special group under your direction, is that not right?

Mr. **Denton**. Yes, sir.

Senator **Wirth**. Can you tell us, what was that special group supposed to do in 1985?

Mr. **Denton**. Because of the problems we had encountered at the TVA, we had established a special group of NRC technical staff dedicated to reviewing the TVA programs. So it was a full-time job to review Watts Bar, Brown's Ferry, and those other plants that TVA owned.

Senator **Wirth**. And your concerns were that the program was, or some peoples' concerns were, that the program was really in very deep trouble, is that correct?

Mr. **Denton**. Yes, sir.

Senator **Wirth**. And that construction had been very shoddy, is that right?

Mr. **Denton**. That came to light, yes, sir.

Senator **Wirth**. Somebody, even at one point during that investigation, I understand, described some of the construction of the program as "third-world construction." Do you remember that?

Mr. **Denton**. I do not remember that, but I remember I began to get calls from individuals at the TVA alleging that various things were not properly constructed. And as a result of our continuing investigations, we confirmed that. And as you know, all the plants were shut down for awhile.

Senator **Wirth**. Who was Admiral White and how did he fit into all of this?

Mr. **Denton**. He was brought in by the TVA to replace the then-existing manager of the TVA nuclear program, who we were experiencing great difficulty with.

Senator **Wirth**. And where did he come from, the Navy?

Mr. **Denton**. He had just retired from the U.S. Navy.

Senator **Wirth**. And why was he brought in to head it up? Because of all of these problems, is that correct?

Mr. **Denton**. It was the TVA's choice, but I assume that they thought he was an experienced manager and could remedy the types of problems they had.

Senator **Wirth**. And what was the discussion surrounding Admiral White's——

Senator **Exon**. Senator, your time is up.

Senator **Wirth**. Well, I will come back and finish this, that is fine.

Senator **Exon**. Senator Thurmond.

Senator **Thurmond**. Mr. Chairman, thank you very much. I am going to have to leave to go out of town. For the next panel, I will have a few questions, if they can be answered for the record if they are not asked by another member of the committee. I just have a couple of questions here that I would propound to you gentlemen. Mr. Denton, Mr. Stello has been accused of being cozy with the nuclear industry. Would you give me your opinion of that allegation?

Mr. **Denton**. I think if you look at Mr. Stello's entire record, he would come off as one of our most aggressive regulators. When operators were found sleeping at Peach Bottom awhile back, he did not hesitate to order both plants shut down. And you can find many instances like that in Mr. Stello's history.

Senator THURMOND. Mr. Parler, would you give me your opinion on that question?

Mr. PARLER. I am not aware of any findings which support the position that Mr. Stello was cozy with the industry. I agree essentially with what Mr. Denton has said.

Senator THURMOND. Now this is the juice in the coconut—do you recommend his approval by the Armed Services Committee for the position to which he has been nominated, Mr. Denton?

Mr. DENTON. Yes, I do.

Senator THURMOND. Mr. Parler.

Mr. PARLER. That is to recommending his approval?

Senator THURMOND. Yes.

Mr. PARLER. Yes, Senator.

Senator THURMOND. You both recommend his approval. You feel he has the integrity, the professional qualifications, and the dedication to do a good job in this position?

Mr. DENTON. Yes, sir.

Mr. PARLER. That certainly is true, based on my experience with Mr. Stello, yes, Senator.

Senator THURMOND. That is all I want to know. Thank you very much.

Senator EXON. Thank you. Senator Wirth, we will go back to you now.

Senator WIRTH. Thank you very much, Mr. Chairman. Let us see if we might, Mr. Denton, go back to Admiral White. Could you describe for us the exchange of correspondence, what happened when you wrote to Admiral White asking him about compliance and when that occurred, and what the expected time of response was going to be, and what Admiral White's response was?

Mr. DENTON. Yes, sir. It all happened 3 or 4 years ago, so I may not remember it exactly.

Senator WIRTH. I would just say, for the record, we did call you earlier and asked if you wanted to review all the documents for this, so there was plenty of opportunity given on this front to review exactly what did happen, is that not correct?

Mr. DENTON. Yes, sir.

Senator WIRTH. That is correct. Please go ahead, Mr. Denton.

Mr. DENTON. One of our commissioners, Commissioner Asselstine, who you may hear from later, was told at the TVA that the plant was not meeting the NRC's quality assurance——

Senator WIRTH. He was told that at the TVA? He went down to visit the TVA and people there told him that?

Mr. DENTON. Yes. I do not remember if it was one plant or the entire program that was not meeting our requirements.

Senator WIRTH. The Watts Bar plant, right?

Mr. DENTON. Watts Bar. We sent Mr. White a letter, asking him to address that situation and state whether or not the plant did meet the Commission's requirements.

Mr. White was new on the job; he had only been there several weeks. He called Mr. Stello while we were riding down to a hearing here, and Mr. Stello talked to him extensively about the intent of that letter and how to respond. I told Mr. Stello then that I thought he was wrong to go into this great of detail with Mr. White. It made me uncomfortable. It bypassed me and the staff, and I wished he had referred the phone call to the staff in the first place.

This led to several investigations, one including the Senate committee that we mentioned earlier. That was looked into and there was no violations of, no improper conduct found in that case. It was just, I think, that I would have preferred that Mr. Stello had gone directly to the people he had put in charge of that area.

Senator WIRTH. The reason you were unhappy about this is you felt he should have gone through staff?

Mr. DENTON. And I felt he should not let himself get dragged into a discussion with Mr. White over the adequacy of the response to us.

Senator WIRTH. Which one was it that you were concerned about, the procedure of going through staff, or were you concerned about the substance of the advice that Mr. Stello gave Admiral White?

Mr. DENTON. It was more the procedure that he was bypassing. I thought Mr. White was attempting to get my supervisor's concurrence before going through the normal technical staff.

Senator WIRTH. So your concern was just procedural?

Mr. DENTON. Yes.

Senator WIRTH. Is that the same thing that you said in your deposition to the Governmental Affairs Committee?

Mr. DENTON. That I do not remember whether it was identical or not, but I was uneasy about it, and thought that that was the wrong foot to start on with Mr. White, who was brand new on the job.

Senator WIRTH. I think there is a very different impression being given, certainly, as I read this transcript. And again, you were asked if this was inappropriate for Mr. Stello to give this kind of advice. You said yes. You also told the committee that in the van, when you were overhearing this conversation, Mr. White talking to Mr. Stello, you also said at that time that we should not be giving the TVA advice on how to respond. Now what was the problem there on how to respond? What does that mean, you should not be giving the TVA advice on how to respond?

Mr. DENTON. As it turned out in the investigation, I think Mr. White had called everyone on the Commission to try to get advice. It was a very serious question and he should have responded based on his own knowledge and with what he could support.

Senator WIRTH. What you are telling us now is very different from what you said earlier, that it was just a procedural problem, that Admiral White should have gone through staff, and Mr. Stello should have had him go through staff. These are two very different answers.

Mr. DENTON. I do not see them as two different ones. I think he talked to Mr. Stello a long time, it turned out he talked to me for a long while, and he talked to other people. And as the investigation of that event unfolded, my perception was that Mr. White had called a lot of people asking about how to respond, and not just Mr. Stello. But I do remember being uncomfortable at the time about that phone call, and that it bypassed the organization in charge of the activity, and that Mr. Stello let himself get dragged into that.

Senator WIRTH. And you remembered this telephone call very clearly, is that right, driving in the van and the telephone call came to you?

Mr. DENTON. I do not remember it that clearly anymore, Senator.

Senator WIRTH. But you remember that it happened?

Mr. DENTON. I remember that it happened, yes, sir.

Senator WIRTH. When asked about this, Mr. Stello said that he did not have any recollection of it. This was important, as you just said, this was a very important discussion. This was a very important discussion between Mr. Stello and Admiral White.

I would also note for the record, Mr. Chairman, I think it might be appropriate to have the pertinent parts from the depositions of Mr. Stello and Mr. Denton made to the Committee on Governmental Affairs to be included in the record. This goes far beyond, I think, just the procedure of what lines you go through; it is what kind of advice was Admiral White being given and was he effectively being told how to answer the various questions on whether or not the plant was in compliance.

Senator EXON. Without objection, it will be included in the record.

[The information referred to follows:]

DEPOSITION OF VICTOR STELLO

COMMITTEE ON GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

- - -

Thursday, July 2, 1987
Washington, D.C.

Deposition of VICTOR STELLO, taken on behalf of the Committee on Governmental Affairs, pursuant to notice, commencing at 1:00 p.m., in Room SD-342, Dirksen Senate Office Building, when were present:

For the Committee on Governmental Affairs:

STEPHEN M. RYAN, ESQ.
Counsel

JOHN J. PARISI, ESQ.
Minority Counsel

DR. LEONARD WEISS
Staff Director

DENNIS T. BERIGAN
Special Consultant

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PROCEEDINGS

MR. RYAN: My name is Stephen Ryan, I am here to take the deposition of Mr. Victor Stello, who is the Executive Director for Operations, the top staff position of the Nuclear Regulatory Commission. I appreciate Mr. Stello's coming here for the appointment today. He is here pursuant to a letter he received from the Chairman requesting that he come in and give such a staff deposition.

In that letter Senator Glenn pointed out to Mr. Stello that Mr. Stello could be represented here today by counsel. Mr. Stello doesn't have a lawyer with him. I just wanted to ask if you are willing to proceed, Mr. Stello, by yourself?

MR. STELLO: Yes.

MR. RYAN: Sir, would you state your name and then be sworn, please.

MR. STELLO: My name is Victor Stello, Junior.

Whereupon,

VICTOR STELLO, JR.

was called as a witness and, having been first duly sworn, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR THE
COMMITTEE ON GOVERNMENTAL AFFAIRS
BY MR. RYAN:

Q. Mr. Stello, I would like to cover some things in background and summarize a factual understanding of certain issues.

Is it correct, sir, that in December of 1985 a member of the NRC, Commissioner Asselstine, was in communication at a meeting with employees of TVA who indicated to Mr. Asselstine that a particular TVA plant, Watts Bar, was not in compliance with the Appendix B regulations?

A. Such a meeting took place. The end of your characterization, of not in compliance with Appendix B--he had a briefing, they had slides they presented to him, they presented a briefing. I can't recall the exact language on the slide. I believe it is in one of the documents, and I don't remember if it said exactly what you just said.

But there was such a meeting. It did take place. There was such a briefing. There were slides presented, which I have seen, and I am not sure whether the slide said exactly what you said or not, but I leave that for the record, whatever they said they said.

Q. In substance, would you agree with the characterization that the gist of that meeting, even if the exact records were not used, was that Watts Bar was not being built in compliance with Appendix B requirements with respect to a number of issues?

A. Yes, where requirements means one or more of the 18 criteria of Appendix B.

Q. Of Appendix B?

A. Yes.

Q. So just summarizing that, there was a meeting with an NRC Commissioner where TVA employees informed him in substance that there were serious issues with respect to whether a particular plant, Watts Bar, was in compliance with Appendix B?

A. That is correct, and I think the examples that gave were--about 11 of them had specific examples or issues that were Appendix B criteria issues.

Q. Subsequently, in January, 1986 a letter was sent from the NRC to TVA asking them to respond within a very short period of time and to describe in their response whether they were or were not in compliance with Appendix B with respect to the Watts Bar plant?

A. I am not being cute, but I wanted just to reflect, they sent a letter. The letter says what the letter says and I didn't want to have your characterization, or mine. The letter is what the letter says, and it related to Appendix B issues, compliance.

Q. Well, what did you understand the letter to mean, sir?

A. Whether or not the plant was in compliance with Appendix B, rather than Appendix B requirements, I think.

Q. What is the difference between Appendix B and

Appendix B requirements?

A. Appendix B contains 18 criteria. Appendix B requirements would mean any one or more of the detailed requirements embodied within that regulation. An issue being whether or not you were in non-compliance with a specific requirement or whether you are at over all non-compliance with the overall intent of Appendix B being the distinction that I would make. But the language of the letter is what it is.

Q. Well, what is your understanding of what was requested in the letter?

A. If I may have it, I would just read the letter.

Q. Did you bring a copy?

A. It will take me a minute to find it.

The exact language of the letter is: "In order to assist the NRC in determining whether or not TVA is in violation of the Commission's rules and regulations in your construction permit, you are requested to furnish under oath or affirmation TVA's corporate position with respect to whether or not 10CFR50 Appendix B requirements are being met at the Watts Bar facility. This position should be provided in writing no later than January 9th, 1986."

Q. The reason that the NRC did this in part was because TVA had previously sent the NRC a letter or communication in writing indicating that they were prepared to load fuel at this facility?

A. The first paragraph of the letter seems to set the stages to the purpose of the letter which indicates that its purpose was this matter came to the NRC attention as a result of Commissioner Asselstine's visit.

Q. My question is--

A. I believe that the rationale or reasoning was related to the Commissioner's visit. The Commissioner visited, he got these statements from the TVA employees. We couldn't respond to them, therefore we sent the company a letter asking the company would they respond to the problems presented to the Commissioner in that meeting and the first paragraph sets the stage for that.

You are correct, however, that in addition we already had such notification from the company. But the motive, as I understand, for this letter, as I understand it, was, in fact, what I just said. It was directly related to the information that the Commissioner got in his visit and it says so in the first paragraph.

Q. These are preliminary matters and I don't think there is a great deal of controversy here so I don't want to get bogged down, but let me ask, it was your understanding at the time that this letter went--or at some point in January--that TVA had already sent a letter or communication in writing to the NRC indicating that the Watts Bar facility was ready to load fuel?

A. You have to ask it again, there is noise here and I am not sure I got the beginning of it.

Q. Were you aware in January of 1986 that TVA in an official communication in writing had indicated that it was prepared to load fuel at the Watts Bar facility?

A. To the best of my recollection, I don't recall being aware of that at that time. Subsequent to that time, later in the spring, I became aware of it when we got a letter from TVA rescinding the original one.

Perhaps in the way of background, if I may, to tell you of my involvement with TVA in this timeframe, it may be very useful to you in understanding why I am responding the way I am.

Prior to January of 1986, I was Mr. Dirk's deputy and had primary responsibility as the Chairman of the Committee for the Review of Generic Requirements and for regional operations and had very little contact on particular cases that were under review by the Commission in any detail whatsoever. So my knowledge of where any particular case was at that time was very, very limited.

In January, when I became the EDO, my preoccupation with the TVA project was in understanding how the staff was organized to deal with whatever the issues were and what were the issues on TVA in terms of getting some understanding of the breath of the problem that we had to work as well as the people that we had to work with and that interact with TVA to get the issues resolved, more in terms of identification of specific tasks, specific individuals to work the tasks, the timing of the resolution of those tasks and how they related and interrelated to other tasks going on.

So the first few months, my involvement with TVA was from a very broad perspective of overall management of the project and very little, if any, time being devoted to any of the detailed problems.

Some of those I became aware of and involved in in some substantial detail later in the course of the year. But the early involvement, especially the first few months, was strictly from a broad management point of view. I was getting considerable pressure from the Commission in terms of whether or not we were aggressively pursuing an identification and resolution of problems at TVA and making sure that we did everything we could to identify and get on the table what the problems were.

So my person involvement in terms of details related to the TVA projects was very superficial.

Q. Would it be correct to say then that on March 20th, 1986 when you had your conversation with Mr. Steve White in the NRC van that you were not aware that TVA had put on file a fuel load application or letter with the NRC?

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A. I believe that my recollection at the moment is that that information came to my attention subsequent to March. I can't recall the date. There is a letter from TVA after that date when they rescinded that original certification of ready for fuel load.

Q. Would it refresh your recollection to know that the rescinding letter was sent in April of 1986?

A. It would be in about that time. That is when I became aware of the original certification of Hugh Parish

Q. So, it would then be--

A. And I want--one more thing.

Q. Go ahead?

A. You said on March 20th, my phone call in the van with Steve White. I don't want my answer to construe that I can in fact recall that that call was in fact March 20th. I cannot do so.

I do not dispute that it was March 20th, and if there is information to corroborate that it is March 20th, I accept it freely. I just don't want to leave the impression, because of the way you asked the question, that my independent recollection was that that phone call was that date. I certainly don't recall.

Q. So would it be correct to say that you have no independent recollection of the day on which the van call took place?

A. That would be fair.

Q. Would it also be correct, sir, that stemming from the fact that you didn't know that there was a fuel load letter on March 20th, 1986, or at least, as you have indicated, until after the events of that period, that you were also unaware that there was an ongoing Office of Investigations review and investigation into the possibility that there had been a material false statement in the submission of the fuel load letter for Watts Bar?

A. I can't recall when I knew that. It was made quite apparent to me sometime later in the year when Mr. Hayes indicated that that was one of the concerns over the phone call, was the possible nexus to his investigation of the Hugh Parish matter.

When that occurred in time, I can't tell you. I clearly became aware of it in reading transcripts that were taken in the OIA investigation and at least a conversation not very long ago--certainly not in the March timeframe--with Mr. Hayes. But when, during that timeframe, I can honestly say I could recall being aware of it, I cannot.

I can't preclude it. I simply--the recollection I have of the intensity and the importance of that investigation related to the phone call was clearly subsequent to that.

Q. But it would be consistent, if you didn't know there was a fuel load letter, you could not very well know that there was an investigation into a material false statement in that letter on the March 20th day?

A. That would be reasonable.

Q. Well, it seems to me that it has to be one way or the other. If you were not aware of the fuel load letter, you could not very well be aware of the material false statement investigation; would you agree?

A. I would agree with that interpretation and the recollection that I have of that coming to my attention is when they sent the letter in rescinding it. There I have a recollection. I don't mean to preclude it, as I said, I can't, that that information wasn't in a piece of paper that may have come across my desk, but I can't recall it.

Q. I understand. We are asking you for your recollection?

A. Do I recall it? No. But I do recall it being an issue after the letter came in to rescind it.

Q. With respect to the January 3rd, 1986 letter, which you have in front of you, asking TVA if they are in compliance with Appendix B with respect to Watts Bar, that was not a routine regulatory communication, was it?

A. I don't know what routine--we have a lot of letters that go out that ask for information, period. We have a lot of letters that good out and ask for information with an oath or affirmation. Letters that ask for information under oath or affirmation I could not characterize as, quote, "non-routine."

Q. Well, let me assist you if I can. How often did letters go out of the NRC based on allegations received by an NRC Commissioner that an entire facility was not being built in compliance with the Appendix B regulations so that there were pervasive allegations of quality assurance breakdown?

A. When you put the proviso that it was the Commissioner, I don't know of any other instance related to tying back to the activities of the Commissioner. But with respect to major allegations or information and facts of significant quality problems at facilities, there were clearly a number of other facilities for which this was the case, and not a trivial number.

Q. Well, this was clearly not a trivial allegation. These were important allegations concerning--

A. Clearly.

Q. --the quality of this plant?

A. That is correct.

Q. And they were extraordinary in the sense that they were made by personnel working for the licensee to the Commissioner who heard the complaints?

A. With respect to the fact that you include the Commissioner, yes. Other than that I would not consider them extraordinary. We get many allegations of quality problems in facilities from employees at facilities.

Q. But these quality problems were not specific quality problems. These were on a number of different areas. It wasn't one area of construction. It wasn't, say, welding, alone. There were a number of areas that went to the very heart of the ability of the Watts Bar facility to meet the Appendix B requirements?

A. That is a correct statement, but I don't want you to construe that in anyway to be unique, either.

Q. So with respect to the letter that was sent, it asks for the response to be made within six days of the receipt of the letter?

A. Excuse me? Six days for what? I am not following you.

Q. For the certification. The line that says: "This position should be provided in writing no later than January 9th, 1986."

A. Okay.

Q. Is it usual for the NRC--

A. No.

Q. --to ask for such information in such a short time period on a subject of an extraordinary nature like this?

A. I don't have very many examples of where we have ever asked for much of anything in a time span of six days. That to me is not normal. We usually give 30, 60, 90 days are typical numbers, and sometimes significantly longer to respond.

Q. Now, with respect to communications you may have had with Mr. White, would it be correct to say that in the course of your business and his business there were times when you were in personal meetings together and times when you would exchange phone calls?

A. Yes. I recall two or three times when I met Mr. White personally and there were phone conversations, clearly.

Q. Mr. White was brought in to see if he could rectify the problems with TVA's nuclear program, the very types of problems that are reflected in the January 3rd letter concerning Watts Bar?

A. Among others?

Q. Among others. At the time that Mr. White was brought into TVA and prior to March 20th, 1986, did you have conversations about the Watts Bar situation and with respect to this particular letter?

A. I do not and cannot recall the exact times or dates of those phone calls. The phone calls related to this letter meld for me where I can't distinguish. You have read the transcripts, and I would rely on the recollections represented in those transcripts, probably principally the earliest one, which was July, or July 30th of last year, which already was a number of months distant from that phone call. Today I certainly wouldn't attempt to be able to do any better than that. I just cannot put any time.

The points that stand out to me were those that I have made that I thought were significant. Those are the major significant thrusts of the conversation or the points that I thought were important to make with reference to that Appendix B letter. And you have the transcripts, so I would certainly rely on those. But I would be happy to summarize them, if you wish.

Q. Let me ask you this, you have reviewed in preparation for today's meeting--perhaps at my request because I asked that the materials be made available to you through the Congressional Affairs Office, or perhaps because you are thorough and you like to prepare for things--the transcript of the deposition that you gave to OIA in July of 1986 concerning this issue, in your review of those materials in preparation for this meeting today, did you notice anything that was incorrect or that now based on a more active recollection you would differ with in that transcript?

A. Reading those transcripts make it even more difficult to discern times or dates related to this issue of which phone calls were made either, as you indicate, on March 20th, which, at least the impression I have is that there was information that corroborated there was such a call on that date--although I don't independently know that--and phone calls that could have been made prior to that time or after that time.

As I read and re-read them, it was difficult for me to be able to put any sense of timing to them, chronological time.

Q. But my question was this, did you notice any inaccuracies in that July 30th or July 31st transcript that you gave to OIA? Did you see anything there that did not agree with your recollection today?

A. No, nothing stood out to me.

Q. So that if we looked at that, that was your best recollection at the time and you know of nothing different from that recollection?

A. No, there is nothing that when I re-read both transcripts, leaped out at me. I did not read them for that purpose, however, but there was nothing as I read them that stood out that I was able to recall that would allow me to change anything that was there. My recollection of the phone calls, is such that I just couldn't do that.

Q. I just want to be clear, you are including the second transcript as well?

A. Yes.

Q. The OI transcript that was recently taken--

A. Yes.

Q. --of you with respect to your memory on these issues?

A. Yes.

Q. And with respect to, then, both transcripts, in reviewing them in preparation for today's meeting, you didn't notice anything about them that was incorrect, based on your recollection right now?

A. That is correct.

Q. Now, in both transcripts, sir, you indicate that there was more than one call; correct?

A. That is correct.

Q. And the one call that everyone seems to be able to recall is that you had a conversation with Steve White of TVA while you were in the NRC's van driving somewhere in the greater Washington area?

A. That is correct. That is the thrust of the OIA investigation for which that conversation took place in the presence of others.

Q. I want your recollection now. I want to switch to your recollection. Is it your recollection that at least one of those conversations was while you were in the van?

A. Yes.

Q. The transcripts do not indicate where the other conversation took place or when it took place in relation to the van conversation which you have already indicated you can't place a date on?

A. That is correct.

Q. Can you tell me sir, was there more than one other conversation in addition to the van conversations and if so, when they fell in timing? Were they before or after the van conversations?

A. That was a question I thought I had already answered and I think the words I used were I think at least one other one. And no, I cannot tell you which conversations were before the van or after the van. I just simply do not have a recollection, except for what it is that I recall stand out for me were major points of the essence of what bothered me, which were the two points that I covered in both transcripts.

Q. We'll get to the substance in a minute. I would just like too talk about the timing. How often do you receive calls from at home from licensees?

A. That is a very difficult judgment to make. I get a lot of calls at home related to work from both NRC employees, and I have from licensees. I would say in the early first few months when Mr. White came on, I got quite few.

Quite a few, that's difficult. I had a number. I can't tell you whether it was five or eight or whatever the number is. I don't know. There were a number of things going on other than the Appendix B issue, unrelated to that, that had to do with arranging, changing Commission meetings, as I recall.

I remember a series of phone calls over a period of I don't know how long in trying to contact Commissioners to see if the Commissioners could agree to changing dates and what have you. I believe--my recollection is those phone calls were generally in the evening.

Q. Now, is your home phone number 301-299-7692?

A. It is.

Q. Do you normally give that number to licensees?

A. I don't ever recall giving that phone number to any licensee personally, but my business card carries it. And the NRC operator, if the NRC operator is contacted, will contact me through that phone number.

She does not need to give it out. If someone calls the NRC operator, they can have that phone number. But my business card, my recollection is I think it is on my card.

Q. Do you recall that Steve White called you at home concerning the Appendix B issue and his response?

A. I can not tell you that any of those phone calls from my home dealt with Appendix B. I don't know. What I do remember from the phone calls at home in my residence clearly were related to Commission meetings that were scheduled that had to be adjusted. The reason I remember that is because I also was calling Commissioners, and I believe I did that from home, and I just recall it being in the evenings.

Q. You have no recollection then--

A. Maybe over a weekend, I am not sure.

Q. You have no recollection of speaking to Steve White at home concerning the Appendix B issues?

A. I don't have a recollection of it, but I am not going to preclude it. I do not recall a phone call at home that dealt with that subject. I had other calls. Whether they were at my residence or at my business office, I certainly could not confirm it.

Q. Well, have I refreshed your recollection, sir, that indeed you did receive a call from Steve White on the night of March 20th, the same day as the van call, or if not March 20th--if your recollection is you cannot recall that date--do you not recall receiving a call at home from Steve White on the same subject on the same day as the van call?

A. I do not recall it and I would not preclude it. I do not have an independent recollection of where I had calls that dealt with that subject. I know I have had calls from him at home and I do recall a series of calls that related to the subject I have already discussed. But I certainly cannot preclude it.

Q. Now, with respect to the statement that you sent Senator Glenn after the hearing, in that statement you indicated that it is your procedure when speaking to licensees, to have other senior staff members available during those conversations. Do you recall putting that in your statement to Senator Glenn?

A. I recall dealing with that subject in my statement and I would rest on the words that are in my statement.

Q. Well, what is your practice with respect to that?

A. If I get a call and there are people in my office, I routinely accept calls while the people are there and I do not ask them to leave. I don't demand privacy for phone calls.

Q. Wouldn't that be different than saying that you have a policy of having a senior staff member nearby or--

A. I don't think I suggested that in my response.

Q. So, with licensees calling you, you make no particular effort--if someone is there they are allowed to stay--but you make no particular effort to have someone with you or anyone to hear the conversation for any reason?

A. I have done both. If it is a subject where I feel others need to be there because it is a subject I am not familiar with or others need to be involved with, I have had and arranged conference calls with others present from my office to participate. I have done both.

Q. Well, with respect to the Appendix B issue, you indicated earlier in the deposition that you had only a peripheral relationship to the particular issues; is that is correct?

A. That is correct.

Q. So at that time that you had your conversation with Steve White--the date of which you can't recollect, but the van conversation--were you very familiar with these Appendix B issues or were they things that you only knew about peripherally?

A. At best, peripherally.

Q. Did you ever tell anyone that you received a call from Steve White at home on the Appendix B issue? Do you ever recall discussing that with anyone?

A. I don't know how I could recall discussing it with anyone because I don't recall having a conversation that dealt with Appendix B from my home. I can't preclude it but I don't recall it, even having the phone call. But I certainly don't have a recollection of then discussing it with anyone.

Q. Bearing in mind that you can't remember the exact date of the van phone call, it is clear that you cannot recall having a discussion at your home that night with Mr. Steve White?

A. I cannot recall the times that Steve White has called me at my residence, either dates nor time.

Q. Well, do you have any recollection of a Appendix B conversation with Steve White while you were at your house?

A. No.

Q. Do you recall that the morning following the van call and--if my facts are correct--the call with Steve White at home, do you recall receiving another call from Mr. White concerning the Appendix B issue the next morning?

A. No.

Q. You have no recollection of that at all?

A. I have no recollection. Again, I am not precluding it. I just don't recall it. It could very well be one of these calls that I have said there were at least one. I just don't have any recollection.

I didn't think very much of the issue. It never entered my mind or reflected on it very much--until I was interviewed in July--that there was really any concern. I don't make any special note of it, except in the sense of what the thrust of the issues that I thought were important that stand out from me related to that matter.

BY DR. WEISS:

Q. Do you keep a log of telephone calls to your office from licensees?

A. Right now since about a year or more, since I got a secretary, whose name is Donna Smith. When she came over, I asked her to maintain a log of phone calls for me, which she now does. Prior to that time, the previous secretary did not, at least, to the best of my knowledge, did not have them. So until approximately I guess it was June of 1986, I did not.

Q. Do you ever keep or write memos to file regarding telephone conversations you have had with licensees that have come to your home?

A. No, nor do I do it for telephone calls that come to my office. I do not routinely write memoranda to files on phone calls. I think if I did that I would probably spend a great deal of my time. I spend a great deal of my time at meetings and on phone calls, and if I reported them it would take a great deal of time. And I don't routinely do it.

Q. I came in a little late so I may be plowing over some ground that was covered, but I am curious about--did you say that you recall having a telephone conversation at your home with Mr. White about the Appendix B issue but you don't recall when it actually took place?

A. No. What I said is I certainly can't preclude that.

Q. I see.

A. Because I had other conversations. I did say that I remembered that there were a series of phone calls with Mr. White from my home. That I do recall. It stands out, because I had to then place a series of additional calls trying to get Commissioners to react to a change in a proposed meeting date, and I don't remember when that was.

But the reason that stands out is because I had to do something I very rarely do at all, which was essentially poll the Commission and see if they would agree to a date. I guess the only reason that I remember those particular calls is because of the rather unusual thing that I was getting a request to have the Commission--poll the Commission--to get a change of a date of a meeting.

Q. How long was it between the van conversation and the time that you were first contacted by someone within the NRC that there was some concern about the nature of that conversation?

A. I think I really first became aware of the concern when I was interviewed in July, July 30th. I don't recall before being told of that investigation and the need to be interviewed by OIA of the concern over it.

Q. I just have one other. Just to make sure that I understand, you had this conversation on March 20th in the van and then somewhere around the end of July you were told that there was some concern about that conversation?

A. That there was going to be an investigation of it.

Q. Well, my question I asked earlier was when did you first become aware that there was concern about that conversation; at that time?

A. Yes, at about that time.

Q. Did you make any attempt on your own at that time to try to reconstruct all the conversations you had with Mr. White about the Appendix B issue after hearing that there was concern about the conversation?

A. No. I made no special preparation for going into OIA interview. I went in and told them what it was that I knew.

Q. And is it your recollection now that you had no recollection then of having had any conversations about Appendix B with Mr. White at your home over the phone?

A. It is my recollection today--and I don't recall recalling it then, if I did, I think I would have said so--but at the same time let me each time make sure that I am not suggesting that that did not take place.

I can't recall it. My work days tend to blend into evenings. It is not unusual for me to be working in the evenings. What I am doing in the evenings versus what I am doing in the daytime, I certainty don't know that I can make the distinction. With one--and it is I think a fairly rare exception--related to this matter, which is the one I have already discussed, and that was because of the unusual nature of having to poll the Commission.

BY MR. RYAN:

Q. Let me then turn to the van phone call. Do you recall prior to the van phone call having a discussion with Steve White on the Appendix B issue?

A. I do not recall it. I do not preclude it.

Q. During your conversation with Mr. White in the van would it be correct to say that you struck a theme with him by suggesting that he didn't need to send this letter at this time, that he ought to take his time and find out more facts? Would that be a correct characterization of one point you made with him?

A. Yes.

Q. That is, you suggested that he wait and not answer in writing now concerning the issues in the January 3rd, letter?

A. The emphasis being on, answer when you really have got your arms around it and are sure you understand the problem.

Q. It was your belief at that time that Mr. White didn't have his hands around that issue and that it was not the appropriate time to send in such a response?

A. I had no basis for belief either way, but a caution. It's a difficult issue. It was clear that had not been in the job very long and I assumed his preoccupation was much like mine in just trying just to understand the overall problem that he had to deal with, as well as, I guess reflection and consideration. At least I had knowledge that he came from the nuclear Navy, rather than commercial and that it was a complicated issue and he ought to understand it before a response.

Q. But you were indicating to him that it was your belief that he should not respond at this time?

A. I'll stay with the answer I gave you. The recollection I have is the emphasis being, make sure you understand it before you respond, leaving the judgment of when did he understand it well enough to him. I certainly couldn't make that judgment, in no way shape or form, I had no way of knowing.

Q. Did you ever use the phrase with him that you didn't want to put pressure on him to respond, that NRC didn't want to pressure him to respond?

A. I certainly don't recall it. It wouldn't seem out of line to have said that to me.

Q. Would that be consistent with your representation that you thought he ought to take as much time as he needed?

A. Yes.

Q. Would you agree, sir, that the second general theme you struck with him was that if he were to respond, if he were to send a letter now, that he ought not to make that a definitive answer to the problem?

A. No. The second theme being that this is a fairly complicated issue and was going to be an issue that would be ongoing for a long time. Appendix B never stops in the review process and that as he continued to review and look into this matter and he found problems, he should be sure to let us know about it.

Q. Did you discuss with him his response and what it ought to contain with respect to what it should say?

A. In the context of those two general points.

Q. There were no other points?

A. No other that I recall. Those were the themes, the points that I thought were important. I certainly couldn't preclude other subjects from coming up. I don't recall them.

Q. How long did the conversation take place in the van?

A. I don't know. Not a very long time.

Q. Just give me a range of your approximation?

A. I have no way of estimating it.

Q. Well, was it more than a half hour or less than I half hour?

A. Well, lets see. If we were traveling in the metropolitan Washington area, typically going from places, probably the total transit time in a van is under a half hour. So my pure guess would be any conversation would be constrained by about that time.

Q. Well, I don't want your pure guess, Mr.Stello?

A. I can't give you anything but a pure guess. I don't have a recollection of how long.

Q. You have no recollection whether it was five minutes or 15 minutes or 30 minutes?

A. That is correct.

Q. None at all?

A. None.

Q. I see. Do you recall whether you placed the call or whether Mr. White placed the call?

A. I tried to see if I could answer that question when I was reading it because I think I saw that point being made differently, and I really don't know.

Q. Do you recall turning around and discussing this with Mr. Taylor and Mr. Denton after you finished the call?

A. I believe I indicated that I, either during the call or after the call, did say something to them.

Q. Did you know that Mr. White had previously called Mr. Denton on that issue that day?

A. I don't ever recall hearing that, no.

Q. Did you tell Mr. White to talk to Mr. Denton about it when you were speaking with him on the phone?

A. I don't know whether I did at that time but I did, in other conversations with Mr. White, indicate that our communication--and this is perhaps one of the other calls I have had with him--was not very good and that we had people who were assigned to work particular problems and that we needed to have people identified that they could work with and that there seemed to be a problem with everything having to float up to him and that there was poor communication between he himself and the senior management team per se.

Q. That is the NRC senior management team?

A. That is correct.

Q. Did you tell him during that conversation that it was an issue that you knew not very much about and that he ought to deal with other persons like Mr. Denton who had the responsibility for the issue rather than yourself?

A. I could have, but I certainly don't recall it.

Q. Is there anything else, Mr. Stello, that you can recall about the van conversation, other than those two points that you have made?

A. I don't wish to leave the impression by your question that those two points were necessarily the two points made in the van, whether the van conversation was generally directed at one of them and previous conversations at another. I can't separate them so I can't tell you whether the van conversation was restricted to one or both of the points. I really don't know.

Q. You do recall Mr. White reading you the letter that proposed to send to the NRC?

A. Today if you ask do I have that recollection, can I fully recall it today? No. But the transcript at the time I was interviewed in July indicated when I responded to that question at that time that I did recall it, so I accept it.

Q. Sir, I am going to try and see if things strike a chord in your recollection. Perhaps we can bring back your recollection on one or two issues.

During the evening hours--if you assumed for the moment that Mr. White called you at home--when you discussed with him his response to the January 3rd, letter, did you indicate to him that he was crossing a bridge he didn't have to cross or doing something that didn't have to do and that he ought not to answer at this time?

A. Well, that would be very consistent with the point. The first point that I was making was to make sure that he was not responding before he really understood the problem. So while I don't recall it, it would certainly be consistent with that idea.

Q. Did you urge him not to send in a letter because it would create a controversy where he may eventually have to withdraw the letter?

A. I don't recall making that statement or a conversation that would include the essence of that, but again, Appendix B issues are very complicated issues and it would be consistent, again, with the theme of making sure that the response did not come in until he clearly understand the problem. That was precisely the point I was trying to make.

Q. Did you indicate to him during that conversation at your home that there was nothing to be gained by sending in a response at this time, taking into account that you have no act of recollection of such a conversation occurring?

A. You mean would that fit with the theme of what I was saying? Yes.

Q. Does that trigger any recollection on your part?

A. No. It does not trigger the recollection, but it certainly fits and is consistent with that idea, the points that I have already brought out, that he needed to really understand the issue before he responds.

Clearly, there is no question the history of our agency, Appendix B issues are very complicated, very difficult issues that go on and on and on until, essentially, until we are finished. He was not there very long and I didn't know whether he had devoted enough time to really understand the issue, and all of that to me fits together. So I would not preclude those issues, those ideas from coming up. They seem very sensibly related to that idea.

Q. Do you recall that Mr. White called you the following morning to discuss with you the changes he had made in his letter based on his conversations with you and Mr. Denton?

A. No, I do not.

Q. You have no recollection of any conversation with Steve White the following day?

A. I do not have a recollection of a conversation with Steve White the following day.

Q. And at the time that your deposition was taken in

July, the only call that is reflected there in specific is the van call. You had no recollection at that time of any over conversations?

A. That is correct.

Q. Did you ever have a conversation with Sharon Connelly about the allegations that your conduct had been somehow improper with respect to the conversations with Steve White?

A. I had a conversation with Sharon Connelly. The conversation was to inform me that there would be an investigation into my conversation with Mr. White on the Appendix B matter.

Q. When is it your recollection that that occurred?

A. In the timeframe of the deposition, the July timeframe.

Q. So it would not have been sometime in April or May, or June even, but closer to the time in July when the deposition occurred?

A. That is the recollection that I have, because there were two investigations ongoing that I was being investigated by OIA on. One was related to the Fermi matter and the other was related to the Steve White phone call. And it was in connection with this. In fact, as I recall the two investigations were in close proximity--the two depositions were in close proximity to each other.

Whether there was a conversation to let me know earlier than that, I just don't recall. But in the timeframe of July, I have a recollection then of being told.

Q. You don't recall being told in April or May, then, about the investigation?

A. I don't have any recollection of being aware of it in April or May. Again, I can't preclude it. I don't have a recollection. The recollection I have is in the timeframe I gave to you.

Q. Do you have feel that your actions in telling Mr. White that he might not want to respond at this time were consistent with the agency's requesting under oath and affirmation a response to the Appendix B issue on January 3rd, 1986?

A. Yes.

Q. How?

A. For the reasons I have already given, and let me summarize them. I think it was very, very important for him to take the time needed so that when he responded to that it was a response based on real understanding of the issue, and that if he had to take more time, he clearly would take more time to do that, that a correct response was far more important than a hurried response, than having a response that didn't actually represent what went on there, in my view, would only create a greater problem to resolve, rather than a response that was generated on the basis of a complete and total understanding of the problem that they faced.

I believe that the idea of a complete and total and accurate response was for more important than anything that was rushed to meet a particular date.

One more point that I think I brought out in the transcript that I recalled coming up, was he felt constrained to responding in a certainly time. I believe I recall reading in preparing for coming here that the thing that stands out is he felt he was being pressured by Commissioner Asselstine and Congress in terms of responding. I think it was very consistent that the proper needs of the agency are for complete and total and accurate information, not hurried responses.

They do not do us any good at all and taking more time to do thorough job who have been of far more best to the NRC than a response that was hurried. I wish he had taken the more time and done a thorough job before responding. It would have saved an awful lot of time and energy.

Q. And in fact you advised him to take more time?

A. That was the general thrust of the point I was making. But again, in the context of taking the amount of time necessary to be sure he had his arms around and understood the problem before response. A complete and total and accurate response is a very important part of our process.

Q. Why did you consider it not important, in terms of a timeliness response to this letter, when the Watts Bar facility was going forward towards fuel load and licensing at that time?

A. To me the response being complete and accurate was far more important than anything else. We were going to have to review, evaluate what was said, the basis for what was said, before we would ever agree to allow that plant to operate. That plant was not going to be allowed to operate until we were sure that the quality problems--which we are not yet sure even as we speak now--are completely and totally resolved.

Good solid accurate information was the most important thing for us to do our job. That plant is not going to get licensed until we have that, nor could it be licensed until we have that. Therefore, the kind of information and the adequacy of that information and the thoroughness of that information is far more important than anything else.

Q. If I follow the logic of that, would it be correct to say that any letter that you send to a licensee which asks whether they are in compliance with any of the regulations of the NRC, ought to wait a year, two years or three years if necessary if they don't have sufficient information to respond categorically yes or no?

A. Of course not. There are questions that we can ask that are very straightforward, narrow to a point where you fully expect to be able to get an answer quickly. Issues related to Appendix B are extremely complex. Those are not easy issues. They are, in essence, the adequacy of the facility itself. They encompass just about every complete and total aspect of the facility, from the materials that are used to build the facility and the quality of those materials as they go through the entire fabrication process, the adequacy of the design and the quality associated with that design, and then the adequacy of the construction at the facility itself.

Appendix B is the most comprehensive regulation dealing with just about every aspect from the original conceptual design through the material fabrication, construction and operation. It is the most difficult area and if you look at the projects which we have had the most difficult time with, it is in resolving the QA issues.

So QA issues are one for which when we get a response, it is a much more significant response than most of the questions that we deal with on a routine matter which are--the results of a stress calculation within code, we don't expect that that would take very long. You look at the stress calculation, you get the result and you can see if it is or isn't within code. So many of the questions that we ask, you can respond to quickly. Questions such as this one are not easy.

Q. Two of your senior managers indicated that they thought that you are conversation was inappropriate and that it made them uncomfortable, was their assessment of it, the van conversation.

What standards exists that would tell an NRC employee--be he in your high position, in the next highest position of directing matters as Mr. Denton, or in a lower level position--what contacts and discussions with licensees are appropriate and which are inappropriate?

A. Within the Office of Nuclear Reactor Regulation there is an office letter that deals with this subject.

Q. Was there one in place an March 20th, 1986?

A. I believe so, yes.

Q. Have you reviewed that letter many times?

A. I am trying to recall if I even read it once. I am aware of it. I couldn't even paraphrase it at the moment. I am aware that it exists but I at this moment couldn't describe to you the complete paraphrase or the context, other than the general thrust that those kinds of instructions exists.

Q. Well, how do you account for the fact that you as the senior agency manager had such a contact with a licensee that your other senior managers felt was inappropriate and made them uncomfortable?

A. I have to stop you. You have used the word "inappropriate." I have read the statements that were made in the

OIA interview. I recall the word "uncomfortable" being used by Mr. Taylor and Denton, I believe. "Inappropriate," I believe that that was a word that was used by Mr. Hayes, and I believe that the context in which he used the word "inappropriate" was because that he felt it was inappropriate because of on an ongoing investigation of the Hugh Parish matter.

Q. Which you have testified you don't know anything about, at that time?

A. Which I testified I didn't have a recollection of the Hugh Parish letter certifying; that is correct. If I may continue, Mr. Hayes' suggestion that it was inappropriate because of that investigation, I certainly don't agree with that and I so indicate in my response back to Glenn. In fact, if you look at the OI interview, I asked if they really saw a nexus between the investigation of the White phone call and the Hugh Parish matter.

I, for one, really don't see a nexus. If that is the basis for being inappropriate, I certainly don't agree with it. To suggest a nexus would broaden it significantly.

Q. I would like to hand you part of the OIA report and direct your attention to the paragraph that I have highlighted in yellow where Mr. Taylor indicates the word "uncomfortable" was how he characterized how it made him feel to listen to that conversation?

A. I said "uncomfortable" I recall being used by both Taylor and Denton.

Q. I see, it was the word "inappropriate"?

A. Yes. The basis--

Q. If you look at the line above that?

A. I did see it. In Mr. Taylor's, it said "inappropriate."

Q. It says, uses the word "inappropriate"?

A. The one that stood out from me was "uncomfortable" and I recall that in Mr. Denton's.

Q. Well, now that we have the word "inappropriate" as well, how do you square them finding it inappropriate and making them uncomfortable with your claim that it was--

A. They gave their reasons.

Q. Well, do you feel that they are wrong in concluding that it was inappropriate and that they were wrong in being made uncomfortable?

A. A feeling of comfort or lack of comfort is a personal thing. They felt that way. They obviously indicated they felt that way. They also--I believe Mr. Denton went on to say although he was uncomfortable, he didn't feel that I in anyway compromised anything for the agency in his reflection on the conversation. I didn't feel it was improper to have that conversation.

I think it was Mr. White calling me up asking me some questions that I tried to deal with as straightforward and as candidly and as honestly as I knew how, in my view, in a way which would be of significant benefit to the NRC.

As I said earlier, I think it is very important for the NRC to get complete and total and accurate information. That is the best for us, and as a senior officer I felt that it was proper for me to remind him to do that. That is a perfectly legitimate function of the NRC, to make sure that licensees understand that, and I certainly don't see anything improper about it.

MR. RYAN: I would like to take five minutes before we conclude.

[Brief recess.]

MR. RYAN: Mr. Stello, I have concluded my questions. If there is anything that you would like to add that would clarify or elaborate on points that were made this afternoon, or any issues that you wish to address simply to let Senator Glenn know about them, please do.

MR. STELLO: There are two issues that I think I wanted to explain a little bit more, and that is a suggestion, or at least, I left the impression that phone calls or working from my home is in anyway unusual, and I wish to clarify that it is not. I routinely spend considerable time working at home, which includes a substantial amount of time on the phone interacting with other NRC employees and licensees when that has been necessary.

I don't wish to mean or to leave you with the impression that an everyday matter is talking to a licensee on the phone, but rather that my workday does not just routinely end at any particular time of the day. For the record, we normally quit at five o'clock. I typically would be at home at 6:30 or 7:00 and routinely will work several more hours beyond that still conducting business. So I spend a lot of time from my home interacting.

The other point that I thought I wanted to make, and that is with respect to a lot of the questions that you were asking me with respect to my reaction to the letter. I do remember conversations after the fact where I have referred to that letter in discussions I have had here up on the Hill. It is a letter that I thought was a dumb letter--his response back--and that it would have been better had we not gotten it.

I just wanted to make sure that I have said that, because that reiterates that all of those things that you were bringing up, you said would I have said those things? They do go together. My reaction is that that was a not a good letter and it did not help us. It hurt us, and it added a great deal of additional work that otherwise would have been avoided. That is all I had to say.

MR. RYAN: Mr. Parisi.

MR. PARISI: No questions.

MR. RYAN: Thank you.

[Whereupon, at 3:00 p.m., the taking of the deposition in the above-entitled matter was concluded.]

CERTIFICATE

I, Billy E. Watt , Official Court Reporter for Miller Reporting Company, Inc., hereby certify that I recorded the foregoing proceedings; that the proceedings have been reduced to typewriting by me, or under my direction, and that the foregoing transcript is a correct and accurate record of the proceedings to the best of my knowledge, ability and belief.

Billy E. Watt

DEPOSITION OF HAROLD R. DENTON
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

- - -

Thursday, July 2, 1987
Washington, D.C.

Deposition of HAROLD R. DENTON, taken on behalf of the Committee on Governmental Affairs, pursuant to notice, commencing at 10:26 a.m., in Room SD-342, Dirksen Senate Office Building, when were present:

For the Committee on Governmental Affairs:

STEPHEN M. RYAN, ESQ.
Counsel

JOHN J. PARISI, ESQ.
Minority Counsel

DENNIS T. BERIGAN
Special Consultant

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PROCEEDINGS

MR. RYAN: My name is Stephen Ryan. I am here to take the deposition of Mr. Harold R. Denton, who is an employee of the Nuclear Regulatory Commission and who received notice from the Chairman of the Committee, Senator John Glenn, to have his deposition taken.

Mr.Denton, would you identify yourself for the record, please, and be sworn?

MR. DENTON: My name is Harold R. Denton. I am Director of the Office of Governmental and Public affairs for the U.S. Nuclear Regulatory Commission.

MR. RYAN: Accompanying me today are another employee of the Majority of Governmental Affairs and Counsel for the Minority and I would like for them to state their names for the record.

MR. BERIGAN: Dennis T. Berigan.

MR. PARISI: John J. Parisi.

Whereupon,

HAROLD R. DENTON

was called as a witness and, having been first duly sworn, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR THE
COMMITTEE ON GOVERNMENTAL AFFAIRS

BY MR. RYAN:

Q. Mr. Denton, in the notice that Senator Glenn sent to you--the letter--he indicated that you had a right to have counsel present but it was not necessary to do so if you choose not to. You are here without counsel today, are you prepared to proceed on this matter.

A. Yes, I am. I feel no need for counsel in this matter.

Q. Mr. Denton, I want to see if we can summarize very quickly some of the events concerning the Watts Bar reactor in Tennessee and bring us up to the point where we can talk about the March 20 letter of Steve White of TVA to the NRC.

Would it be correct, sir, to summarize some of the facts as follows: In December of 1985, a Commissioner of the NRC, James Asselstine, while at a facility of the TVA met with employees of TVA who indicated that there was severe or serious quality assurance problems with respect to the Watts Bar reactor; would that be correct?

A. Yes.

Q. These engineers who met with Mr. Asselstine indicated in fact that the Watts Bar reactor was not being built in compliance with the Appendix B regulations of the NRC?

A. That is correct.

Q. Would you describe briefly what Appendix B is so that we will have a basis of knowing that?

A. Appendix B of the Commission's regulation is shorthand for those regulations which govern the quality assurance program of a licensee and they speak to the details through which a licensee controls the design, construction and operation of a plant so as to assure that a plant is constructed, designed and operated in accordance with the application.

Q. If you were to find that a plant was not built in accordance with Appendix B, would it be licensed?

A. Not until the issues had been reviewed and corrected and proper attention given to them.

Q. In early January, 1986, the NRC sent a letter to TVA asking them very directly to respond to the allegations made by the engineers that Watts Bar did not comply with Appendix B; correct?

A. Yes.

Q. That letter requested a response in a very short period of time?

A. Yes.

Q. Subsequently, TVA indicated that they not prepared to respond immediately because they were bringing in a new manager to run their nuclear program?

A. Mr. Dean asked me for more time when I met him at H Street after we had sent the original letter.

Q. Mr. Dean is the Chairman of TVA?

A. Yes.

Q. With respect to the letter that was sent in January, this was not a routine regulatory request for information, was it?

A. It was a bit unusual in that the issue had arisen through the visit of a Commissioner. Earlier that year I had began to receive phone calls from TVA employees concerning the problems that they thought existed at Watts Bar--this was during the previous year--and in fact I had met with the then director of the TVA program, Mr. Hugh Parish, on many occasions during the summer concerning employee concerns, and, in fact, I had met with the TVA Board and at the urging of the NRC, TVA had instituted a program to interview all of its employees and determine the extent to which employees were dissatisfied with the quality of construction.

So there was a history of evolving employee concern about the quality of TVA prior to Mr. Asselstine's visit. But I think what was unique at the time was the fact that the Commissioner had been briefed by supposedly responsible TVA officials and told that the plant did not meet the Commission's requirements.

Q. This was inconsistent with the fact that TVA had previously, in 1985, sent a letter or communication to the NRC--an official communication--requesting that they be able to load fuel at this facility?

A. That is correct.

Q. You can't load fuel if you do not comply with Appendix B?

A. Maybe I should say a bit more about Appendix B. Appendix B covers all aspects of construction between concrete and electrical work, mechanical, and it is not uncommon for licensees to experience difficulties in one area or another and they have to rework this area and reinspect it and assure that ultimately at the end of the process you are in compliance.

So there may be periods of time in which you discover problems in construction and sometimes people debate during that time, are you in compliance with Appendix B. But Appendix B has provisions for inspection and retesting and redo. If you have an adequate program it will detect variances from the norm. So we would not knowingly license a plant with issues still outstanding about the quality of the plant.

Q. In the Watts Bar case however, there were very serious issues regarding many areas of the plant and pervasive concerns about the breakdown in quality assurance?

A. I think by the time the letter was sent, the employee concern program had picked up considerable momentum and a lot of employees had been interviewed and there were known to be a large number of employee concerns being raised. What wasn't known at the time was the extent to which those concerns might be valid.

Q. Taking in mind what you have already said about how Appendix B works, and the key is ultimately when a plant comes up for fuel load and then subsequently for a power license, at those points the Appendix B issues have to be resolved?

A. Yes.

Q. So that it was inconsistent for TVA to have employees reaching out to a high level of the Commission, to a Commissioner or to someone like yourself, and telling them that the Appendix B concerns were very serious ones at the same time that a fuel load letter had been put in with the NRC?

A. Yes. I don't want to get too much background but perhaps it would be useful to give you a little bit.

After the Three Mile Island accident the TVA board did talk to the NRC about ways to improve safety at TVA facilities and one of the things they did was create what was referred to as the NSRS, an acronym for Nuclear Safety Review Staff, and they were intended to be part of the ombudsman.

They didn't need NRC approval to create it and it certainly looked like a good idea and that would be a way that the TVA board could get direct access to opinions about the adequacy of the TVA programs, and that is the group that briefed Asselstine, and so normally you would accord such a group considerable deference because they were creatures of the Board and were picked to be impartial non-line duty observers of how good TVA was doing.

There had begun to be dissension within the NSRS, but nonetheless, I felt that was a very important presentation that they gave to the Commission and--I mean to the Commissioner--and what I wanted to know is what did the TVA board think of this matter? Had they been briefed by the NSRS staff? Had they come to the same conclusion?

If so, they should let us know that and not keep us in the dark. I had had this previous year's interaction with TVA on very similar matters so I thought it was a very important issue. But the timing by which they answered--whether they told us in one week or one month or months and months--didn't affect public health and safety because we weren't going to license the plant until those issues were resolved.

Q. Would you agree that this communication--the January communication to TVA--that letter was a very significant letter in terms of the future of the Watts Bar plant?

A. It certainly was.

Q. It was an important regulatory communication, it was not a routine regulatory communication?

A. That is correct.

Q. And it was treated as such both by NRC personnel and by TVA personnel?

A. Well, it certainly was by NRC.

Q. At the same time that these issues were under way about Watts Bar, were you aware that there was an OI--Office of Investigation--review ongoing concerning whether a material false statement had been made in TVA's application to load fuel at Watts Bar?

A. Yes, I was. I had been appointed chairman of the TVA senior management team about a year prior to that letter and on the team with me was Ben Hayes, the Director of the Office of Investigation, Jim Taylor, Director of the Office of Inspection and Enforcement, and a member from Region 2. Originally it was a regional administrator, Nelson Brace, and then subsequently he was replaced by Gary Zech.

So the three of us met often and it was in the course of those sort of meetings, I am sure, that the question of whether Hugh Parish's letter was proper or not--and the fact that it was under investigation was certainly known to me at that time.

Q. The existence of the OI investigation therefore would be one more factor that one would have to take into account in the relationship of the NRC and TVA concerning this Watts Bar Appendix B issue?

A. I guess I didn't at the time see the two being that coupled. I had met with Hugh Parish and his deputy, Mr. Darling, that previous summer and found that I didn't think they were on top of the details of what was going on at the TVA and one of my complaints to the TVA board was that they needed managers at the top level who understood the details.

I had assumed at the time when Parish made that letter--wrote us that letter--he had just failed to get the full input from his staff and was unaware of the existence of all of these concerns that were bubbling around by his own employees.

So I don't think at the time of this letter, then, that we are talking about, I had not coupled it that closely to the investigation of Hugh Parish's letter. I am aware that Ben Hayes was doing an investigation, but at the time it just didn't seem to me that they were that tightly tied together.

Q. In January of 1986, Mr. Steve White, a former Navy admiral, was brought in to take charge and see if he could rectify the serious problems not only at the Watts Bar facility but at all of the other TVA reactors that were under construction or coming up for licensing review?

A. Yes.

Q. Based on the fact that Mr. White was new to the job, did TVA seek to have an extension of time during which they could review matters before answering the January 3rd, 1986, letter which asked if they were in compliance with

Appendix B?

A. My memory is that I was down at H street at our Commission headquarters at the same time that Mr. Dean was down there introducing Mr. White. I must have been down for some other meeting, a meeting on a different plant, perhaps, but I met Mr. Dean an he introduced White and in the course of that asked for more time and I told him verbally that I didn't see any difficulty with that, recognizing he had just brought in a new director for the nuclear programs and that it would take him awhile to get his arms around this issue. And I remember passing that request on to the chairman of the NRC, Mr. Palladino, at the time verbally and getting his verbal okay to do that.

Q. Now, lets advance to March 20th, 1986. Would it be correct to say that in a substantive area, the technical areas that were under your control at that time, that you were the decision making official on the staff concerning this Watts Bar issue?

A. That is correct.

Q. That is, although you report to Victor Stello, who was the Executive Director of the agency at that time, and he reports to the Commissioners, you were the on-line manager and he was not in a hands-on position with respect to this TVA issue?

A. By statute, the Director of the Office of NRR is empowered to issue licenses and suspend licenses. The degree to which the EDO and the Commission get involved in advising the line offices has varied--is my observation--over the past years.

Q. Well, that is an ambiguous statement. Let me ask you licenses. Let's be direct about March 20th. Was Victor Stello making the decisions with respect to Watts Bar or were you doing it as the authority and the line authority would seem to indicate?

A. I was the line authority in making such decisions. Vic was more technically inclined and more interested in issues than the previous EDO who had a management rather than a technical background.

Q. Now, on March 20th, 1986, TVA had not yet formally responded in writing to the January 3rd letter?

A. That is correct.

Q. During the course of March 20th, 1986, did you have conversations with Steve White concerning White's proposed response to the January 3rd letter?

A. Well, after Mr. White came on board I think there were a lot of discussions between our staff and Mr. White and he was trying to formulate plans to address the issues that we had come up with. And I had formed an internal group to focus on TVA and I was also responsible for the other 100-odd reactors in operation or under construction so I appointed

Mr. Hugh Thompson and he had a staff under him who worked full-time on TVA. So I just want to set the stage that TVA, while important, wasn't the only operating plant requiring attention.

I am sure I had a lot of conversations with Mr. White but I do think that before that substance--the issue of the moment between Vic and Mr. White--that Steve had called me about his response to that letter.

Q. Would it be correct to summarize then that between the January date when Mr. White came to work and this March 20th date you had conversations with him but he had never explicitly sought your advice or your understanding with respect to how he should answer that January letter?

A. I think there had been a lot of discussions about the allegations and the technical matters, but I don't recall discussing anything about how to answer the letter. But we did write detailed monthly reports to the Commission in that timeframe and you may find, looking into that area, some contemporaneous discussion, because we tried to keep the Commission fully informed about everything that was going on in that time period. But I don't recall having any discussions prior to about that time about their answering the letter.

I think the reason was that--the answer to the letter that the staff's actions were going forward and we were making sure that the QC program was thorough in identifying all the allegations of the employees and that TVA was going to vigorously pursue those was our objective--so we were more focused on making sure that the allegations were being documented and programs being put in place to pursue them and we were organizing consultants and teams of people to go check the various areas that we were interested in.

So while we were waiting for his letter to come in, we were really going to base--we had decided internally that we weren't going to base our answer just on a piece of paper, I mean, our views on licensing on that piece of paper. We would look behind it and we were going to do in depth looking at the welds and the electrical cables and concrete work and through our normal inspection techniques. So we were certainly interested in the letter but it is not as though that was taken at face value.

I may be giving you more answers than you need, longer answers than you want on these, but I wanted you to understand the context of the actions that were being taken.

Q. Let me make it clear that I welcome any additional information that you think would help someone understand it in context and that I don't mind if I ask about a particular thing and you feel that that needs to be expanded in some way. I appreciate that assistance. This is a search for truth, it is not an inquisition and shouldn't be treated as such. So we want to understand what was in your mind.

Let me ask a hypothetical question. Let's assume for the moment that on March 20th, 1986, the agency were to receive a letter from Steve White that said, to the best of our knowledge we can't certify that Watts Bar is in compliance with Appendix B; I can say that what is going on right now complies with Appendix B, but what was done in the past, I can't tell you, and in fact it may not be, because I just can't tell you.

Would that kind of a response, had that been received, would that require that the construction be shut down until such time as people could go back and find out whether the construction that had already taken place complied with Appendix B?

A. It could, and there had been previous examples where construction in some areas had been stopped, and in retrospect it might have been an easier situation to deal with if the answer had come back that we can't assure you that it is being met in this area, this area and this area, and we are establishing get-well plans and we are going to reinspect and stop construction there; reinspect and redo until we satisfy ourselves.

That was not an uncommon finding in the construction of other power plants, and whether it required stopping construction of everything depended on what the defect that was found, whether it was so profound that you couldn't be assured of any activity or whether it was limited to certain crafts or engineering disciplines.

Q. But the NSRS group that briefed Jim Asselstine indicated that there were profound problems with Watts Bar?

A. Yes, and in their briefing they had identified a number, I think 10 or 11 areas in which they thought there were serious quality issues.

Q. Now, lets assume that on March 20th, 1986 Mr. White sent a letter that said, yes, indeed we are in compliance with Appendix B. He would then be subject, potentially, to making a material false statement to the Commission if it turned out later on that that was not true?

A. Yes.

Q. So that Mr. White was in a very difficult position on March 20th, 1986 wasn't he?

A. That certainly, I think, at the time was thought to be the principal issue, perhaps, confronting TVA, was Watts Bar and these issues were beginning to surface and it was a very difficult position for him.

Q. Because if he chose on the one hand to say that they didn't know if they complied or that they didn't comply, it might end up shutting down construction of the reactor, at least in certain areas. But on the other hand, if he answered yes, we do comply, he might be making a material false statement. That made it a difficult letter to answer from the part of TVA?

A. However, no more difficult than what I had gotten from 40 or 50 other licensees at the time of construction in which they certify in effect that the construction and design did meet our standards.

Q. Clearly, this was information the NRC needed to be able to conduct its business, which is the review of the construction and the review of the adequacy of the safeguards at each nuclear plant?

A. Yes. And it was unusual in the sense that we were being told it was inadequate by TVA's own employees and by the managers of TVA for the past year trying to show that those concerns were unfounded. So we wanted to force TVA to confront the issue, deal with its problem internally, decide who was right, bring in consultants, experts and peer panels and decide the issue and let us know what they decided, and then we would go inspect it with our own experts and see if we thought their decision was right.

So we weren't trying to force White to come down on one side or the other, but having 20 percent of the Commission being told one thing, I felt that I needed to inform the Commission of what the official TVA view was on this matter, and for all I knew at the time, the Board had adopted the NSRS view.

Q. Because on March 20th, TVA's position was still internally inconsistent?

A. They were still in turmoil and apparently a lot of disagreement internally as to whether these concerns that had arisen were truly valid or significant and it was certainly inconsistent with the approach they had taken the earlier, previous year that they were about ready for an operating license.

Just by way of background, there was a plant, for example, that built a plant with a mirror image problem. The drawings were a mirror image reverse of what they should have been and so that plant obviously didn't meet Appendix B in that case and it took them many man-years of work and a long time delay to reanalyze and redo it and change it and then we inspected it, but ultimately that issue got straightened out.

And I would have expected TVA could have taken the same approach to any areas that they found, in the sense that nuclear plants can be modified to remedy defect. I mean, it's within the present state of technology to build a plant that meets our standards, so if it is not built due to personnel errors, or procedural breakdown, or management incompetence, it can be redone. It might take great costs, great time, but these areas are not necessarily bars to proper remedial action.

Q. But the key was that if you didn't have an answer that said, yes, we comply with Appendix B, then you could not certify such a plant as being safe for the public?

A. Well, I wanted TVA to go first in this matter. They were their employees. They were issues not raised by some third party outside, and I wanted TVA to take a position, frankly, and then I would take my own position after they took it.

But I didn't want the regulatory agency to be the only group--with our small audit operation and the few number of inspectors and staff we have compared to TVA's-- I thought they should be, in the first instance, the one deciding is the plant constructed properly? And we would have an independent opinion.

Q. Now, at bottom, though, Mr. White wanted to get the advice of those senior NRC managers, yourself included, as to how to respond to this letter, and in fact when he drafted his response, he called you to discuss his response?

A. I remember him calling, that there was a phone call, and he wanted to tell me about the TVA response. My memory of what I said back to him was, you tell us whatever you think, you have got access to all the information. And I might have listened to him describe what he was going to say, but I thought in that case it was clearly his decision to tell us whatever he thought the facts warranted, and I had no better view of the facts, and I had a lot less facts than he had.

Q. Do you recall, was that conversation before any other conversation that you may have overheard of Mr. White's speaking with Mr. Stello?

A. I am pretty sure it was.

Q. That is, your conversation was prior to the Stello conversation?

A. Yes. And I remember--at least I have been interviewed so many times on this topic it seems to me that I remember--thinking that White was new to the regulatory system and realized that we didn't do business by having the top executive of one company call the top executive of the other and get pre-approval and that White's prerogative was to send us whatever he wanted to as the answer and we would look behind it.

I have made no attempt to go back and check to see if it was before or after Vic's call but my sense is that it must have been before, but I guess that is an ascertainable fact.

Q. Do you think there were multiple calls to you that day from Mr. White?

A. No, I don't know. White was interested in not only Watts Bar, but Brown's Ferry and Sequoyah, because they were operating plants which also were beginning to trouble the NRC, so there might have been calls. But I don't remember any one on that particular matter, unless I am just blurring more than one phone call.

Q. Your best recollection is that there is one phone call; do you recall the length of that?

A. No, I don't. It might be available in our log books.

Q. During that conversation, Mr. White was pressing in a polite manner to get you to give him some advice with regard to the response that he had drafted to the January 3rd letter?

A. Yes. He might have been doing other things, too, in that I think at the time White did want to explain how he was reorganizing and he was bringing in these people and this and that, so to some extent you listen. We are civil servants and we listen to licensees tell us whatever they want to tell us, but I think the purpose of the call was, obviously, that letter, and he wanted to explore, I think, my reaction to it.

And the best I can remember was my reaction was, aha, you send us whatever you think the facts are that warrant it and we will take a look at it. And I would have thought that I would have told him that those questions were very complex and controversial and I had a staff of experts and we would make up our own mind and don't try to talk to me to get sort of prior approval on that letter.

Q. You clearly perceived that there is a line you did not want to cross as a regulator in providing advice on the substance of the response to Mr. White?

A. I think there is a line in any regulatory dealing with licensees. We talk about arm's length regulation. I was with the Commission when the NRC split off from the AEC and we became charged solely with regulation and not with promotion. And Chairman Anders at the time said we should be open and fair regulators.

So we deal with licensees a lot. We have resident inspectors who are at the reactor licensing site and we have almost a day-to-day interaction with many licensees on technical matters. They have things break and go wrong and they call and they explain them to us. It's very much hands-on regulatory approach.

And I feel comfortable explaining regulations, standard review plans, practices, past precedents and that sort of thing, but when the licensee is asked to respond to a request for information and he has got the information, I don't feel comfortable telling him how to respond.

In other words, it seems to me that is his call, and especially in this case, where it had become a matter of some controversy even within TVA's own technical staffs as to what the right answer was--I don't know. That is why I asked Steve to--and I assume that is why he was brought in down there--was to figure out what the truth was and tell us.

Q. So that particularly with respect to this regulatory communication, you would not have been comfortable assisting Mr. White in drafting the response?

A. I certainly would not have been comfortable, and I think I talked to Mr. Taylor and my memory is that Mr. Taylor had gotten a similar phone call and had the same uneasiness about White's trying to get us involved in his reply. And maybe he was used to working differently in his previous job, but I thought in this one it was his job to tell us whatever he thought and it was our job to review it.

Now, on process, on dates and times and how long it takes, I would certainly feel comfortable in those areas. But as to the substance of what the reply was, are they in compliance with Appendix B and in what areas? That was clearly Steve's affair and it was his duty, I thought, to tell us honestly whatever the facts were and it was our job to independently see if we agree with him.

Q. Would it be correct to say then that you don't feel that you crossed any line of propriety in your conversation with him, that you therefore didn't give him the kind of advice that he was apparently seeking?

A. Well, he must have raised my sensitivity to at least being aware of the issue when he called me, but I didn't feel that I had crossed, myself, any line, but the need for such a line, obviously, was called to my attention by that phone call. But I thought--whenever he called me I had assumed that was the end of it.

But, you know, it has been a couple of years and I think maybe you have talked to Mr. Taylor and Mr. Hayes, but perhaps they remember better than I do what I told them at that time. But based on that I did talk to the other two members of the senior management team about that call. I think I called it to Mr. Hayes' attention, and probably after Mr. Taylor's.

Q. Now, did you, in your discussions with Mr. White in this call, ever indicate that you had particular concern to him that didn't have all the facts and that he ought not to send a response if he didn't have the facts?

A. I don't really know if I did or not. I would think I would have been very cautious in trying to advise him on what to do. I might have told him what we knew, namely--but I didn't know anything that he didn't know--but I might have told him that we were aware that there were hundreds of allegations that were emerging in various areas and that we didn't know the ultimate validity of those.

Q. Would you have been comfortable telling Mr. White, or did you tell Mr. White--or would have been comfortable telling Mr. White, either--that ought not to send a letter at this time?

A. I don't think I would have suggested that he not send a letter.

Q. Would that have crossed the line to tell him that he need not respond at this time?

A. Well, we had asked for the letter, so I don't think I would have said, don't send the letter, back to him.

Q. Well, would that have crossed the line of propriety to make the suggestion to him that a response not be sent at this time?

A. Well, I would think--it seems to me in a case like that, it is the licensee's duty to answer the letter with whatever way he cares to, and if he wants to ask for or extension of time, if he wants to say it does meet it or it doesn't meet it, we have gotten--by this time in that review we have gotten into the arena whereby we could not advise or should not advise him on that sort of thing. It was his call.

Q. You had reached a point where they had already been granted a number of extensions. Would it have been proper for an NRC official to suggest to them that they still didn't have the facts and that they ought not to send a letter at this time, or a response?

A. I would have felt uncomfortable, myself, doing that, I think.

Q. Now, subsequent to your conversation with Mr. White, were you present when any other senior NRC official had a conversation on the same subject with Mr. White?

A. Yes.

Q. Who was that individual? And, if you can, place it in the context of how long after your call this other one took place.

A. My memory is the call to me was probably the day before, or it has been suggested, maybe the same day that I was riding in a van with Mr. Vic Stello and Mr. Jim Taylor and possibly others, and it seems to me that we were riding in--we normally would ride in a car if there were only a few of us, and the fact that we were in a van probably meant there were even more people in the van that just us.

It was probably a Congressional hearing or a budget hearing at the time, and the reason we would good by Silver Spring is that some of our divisions are in Silver Spring and so I would think the van probably had five or six people in there at the time, and that is when I overheard a conversation between Mr. Stello and Mr. White.

Q. Did Mr. White call Mr. Stello or did Mr. Stello call Mr. White?

A. My memory on that is that Vic probably called his office to see what had happened in the time he had been away and was told that Mr. White had called. I kind of think Vic placed the call from the van.

Q. Now, Mr. Stello was your superior?

A. Yes.

Q. When he placed that call and started talking to Steve White, what was he talking about?

A. Well, I don't--since I didn't hear but half the conversation--

Q. That is, you heard Stello's end of the conversation?

A. Yes.

Q. You did not overhear what White was saying to Mr. Stello?

A. That is correct. And I don't know what the conversation started on, but it quickly caught my attention when they began the talk about that forthcoming reply. And Mr. Taylor and I were sitting adjacent to each other and I am sure had the view, well, here comes Mr. White to our boss, on this same issue that he has been talking to us about.

Q. So he--White--was going over the head of the manager who had the responsibility, to Vic Stello who is the top man in the operation below the Commissioners--

A. Yes.

Q. --to discuss the same issue that he had already discussed with you?

A. That was certainly a part of our feeling, I think, at the time. And then it did seem that Vic was getting more into the substance of the discussion with White than Mr. Taylor and I would have felt comfortable doing. And that is kind of my recollection of how we felt about the phone call.

Q. Now, you have indicated before that you felt uncomfortable with what Mr. Stello was saying to Mr. White during that conversation; correct?

A. Yes.

Q. And that you thought the conversation was in some ways inappropriate on Stello's part; correct?

A. Yes.

Q. What was the difference between Stello's conversation and your conversation? What was the thing that made Stello's conversation inappropriate while you consider your own to have been appropriate?

A. I think it was my perception that Vic was more willing to discuss substance than I was and that they were talking about details of things in the letter and sentences and findings than I would have felt comfortable responding to.

In other words, I will listen to anyone tell me their views or tell me what they are going to send in, but I don't feel comfortable expressing the, quote, "NRC view" back on that, and I think Vic discussed the matters, and obviously the other party on the phone was asking Vic various questions and Vic was discussing it in a technical context.

And I think it was that fact that I felt uncomfortable with, because I knew I had a technical staff of people and inspectors at the site who were deeply involved in these issues and could discuss details, and I just felt that we shouldn't be giving TVA any advice on how to respond.

I thought Vic was trying to discourage him from answering the way he was answering. I mean, whatever he was proposing to do, Vic seemed to have a problem with it.

Q. So the context of the phone call and reducing it to its essence is that Mr. Stello, from the portion that you overheard, was telling Mr. White not to answer in the way that he was planning to answer?

A. I don't remember any specific points other than I would characterize it the way you did; that he was trying to discourage, apparently, Mr. White from whatever White was proposing.

Q. Did you get the impression that Mr. Stello was encouraging White not to answer at all at this time?

A. That is not a strong memory, but I do remember a tone, maybe, in Mr. Stello's comments, that, do you realize what you are getting into and how complicated this is and do you really understand it? And he might have suggested you shouldn't get too far out on a limb until you understand it all.

But it wasn't any particular thing about Mr. Stello's phone call, other than a willingness to perhaps engage in a substantive discussion of the merits of the letter as opposed to just terminating the conversation after

Mr. White had explained what he intended to do. In other words, that would have been entirely proper, in my view, for Vic to have gotten a call from Mr. White and Mr. White say, here is what we are going to do, your letter will arrive in the mail, period, thank you very much.

Q. Do you recall approximately how long this conversation took place?

A. I really don't, but I would guess ten minutes or longer. But I don't recall the exact time.

Q. Did Mr. Stello indicate that he thought that White ought to change his response, in addition to the discussion about whether he wanted to respond at this time?

A. Well, I think after the phone call was over there was a discussion between Vic and Jim and I and Vic may have brought that topic up then. I don't really remember him bringing it up that strongly in the phone call, but it was more Vic explaining then to Jim and I do you know what White is going to say; something like that.

Q. During the conversation with White, did Stello indicate that he, White, ought to speak with you again about these issues?

A. I don't remember that, since I was right there. But the context of the phone call was not a nice quiet room but rather a van in traffic and a lot of people and discussions between the people sometimes and sometimes overhearing, so it wasn't as though we were glued to every word that Vic was saying to Mr. White.

Q. On the other hand, while the conversation was going on, you and Mr. Taylor must have exchanged either looks or words to indicate your dissatisfaction or your uncomfortableness with the conversation?

A. I am sure we did, yes.

Q. Do you recall whether you were talking to one another or just whether it was a matter of looks?

A. I think we probably talked to each other during the phone call. In other words, we don't want to get into such mechanics, but it was just the conventional car phone and Mr. Stello sits in the front seat of the van and we were in seats behind the driver and Mr. Stello's seat, and we might have been in either the first or second row, because I think there were other people in the van with us.

And we probably paid a lot of attention to the phone call and urged our compatriots to be quiet at some part in it, and then some other time we might have gone back talking about why is White doing this, and missed some of the phone call. So it was not a case in which we heard every word that they said, I am sure.

But at the same time, at the end of it, I didn't feel that the net result of the phone call kept me from doing an adequate review job, and that is what OIA had asked me, did

I feel that we had been compromised.

Or eventually, the letter came in. You saw that we wrote back to TVA saying we were extremely doubtful of this matter and we defer making a decision on whether you are right or wrong until a lot more information has become available. So we kept being asked by people, do we agree with Mr. White or not and we said we don't know, it is too early to tell. So we were determined to wait until the facts were in before making a call on the validity of that letter.

Q. When Mr. Stello turned around to talk with you or spoke with you about the just concluded phone call, did he indicate that it was his belief that White ought not to answer the letter now, that he ought not to send in a response?

A. I think he did, but not in the sense of not answer the letter. I wouldn't say it that way, that he not answer the letter at all, but answer the letter--

Q. --not conclusively. That he wouldn't say--

A. --less conclusively, somehow. Yes.

Q. And the remainder of his advice to White that he expressed in talking with you and Mr. Taylor was that if White was determined to give a response, that that response be a qualified one, that it not be a definitive one, that it not state categorically yes or no with respect to these things.

A. I think that was the tenor of the discussion that Vic had with us afterwards.

Q. And that was the discussion that you felt had gone over the line?

A. Yes. Now, I would have thought if I had been in Mr. White's shoes at the time, I would have called in the NSRS and said, what is the basis for the presentation that you gave Mr. Asselstine? I would have heard the same presentation, I would have tasked my engineering department and the construction department to write me briefs on those issues. I would have establish panels of inside or outside consultants to pursue them, put all that material together and whatever it said it would say, and send that to the Commission and say, we have looked into all ten or eleven areas.

And I didn't know at the time to what extent Mr. White had done that or not. I mean, he had quite a reputation. TVA has largely infinite resources and we didn't know during those conversations to what extent Mr. White had been able to work such a wonder and develop definitive well-supported positions on those matters, and that is why I thought it was strictly up to him to reply to the letter.

Q. Did Stello indicate to you at the time that he concluded the van conversation--which I assume was in the afternoon at some point on that day?

A. I don't remember if it was in the afternoon or the morning.

Q. Your distinct recollection though was that your phone call with Mr. White had preceded that?

A. That is the way a remember it. I could be wrong, but it just seems that way to me, or else--I don't know. Maybe it was the reverse, but my memory is it came to me first.

Q. Did Mr. Stello indicate to you that he had had any other conversations that day with Mr. White?

A. I don't think he did.

Q. Were you aware that, subsequent to that van conversation, that evening, that Mr. White and Mr. Stello spoke for some length of time about the same issues again?

A. I don't remember being aware of that.

Q. Did Mr. Stello ever tell you about such a conversation?

A. If he did, I don't remember it.

Q. Is it unusual for a senior NRC manager such as yourself or Mr. Stello to receive calls from licensees at home?

A. It is unusual but not unheard of and some licensees, if we don't respond to their phone calls during the normal working day--and our secretary understands we have other high priority things to do--will call the NRC operator after working hours and then they call our house and then it is kind of hard, if you answer the phone, to get out of talking to the licensee if he is on the other end.

Q. You obviously spoke with Mr. Stello approximately within 24, 48 or 72 hours after the time that White's letter came in responding to the January 3rd letter?

A. I am sure I did. I gave Mr. Stello periodic briefings on the status of our TVA efforts and that was a more formal arrangement. We prepared briefing slides and Hugh Thompson was the principal briefer on behalf of the senior management team.

Q. I want to be very specific. You don't have any recollection of Mr. Stello telling you that he had a conversation at home with Steve White about this very same issue?

A. No, I don't.

Q. Did you or Mr. Taylor ever--I will use the word, confront--but indicate to Mr. Stello that you thought he had been, at least, walking the line if not over the line in terms of the conversation he had had with White with respect to the substance of White's response?

A. I don't think we did because it didn't seem to affect the outcome. You know, a letter came in from White and we weren't going to rely on that letter just verbatim. For whatever reason, we did not confront Vic with it at the time.

So I think we must have felt it was going further than we would have gone but it didn't keep us from doing our job in reviewing the adequacy of the letter.

Q. On the other hand, it went so far that you felt it was necessary to bring it to the attention of the other senior NRC manager who had a different set of responsibilities, Ben Hayes, who is the Director of the Office of Investigations; correct?

A. Yes?

Q. So that you were uncomfortable enough that subsequently on a day after these conversations, you told the senior watchdog who looks for licensee misconduct and wrongdoing about the conversation?

A. But I don't think I told it so much for him to go look into it for wrongdoing as just to keep him apprised of Steve White's management style, which we were increasingly concerned about at the time because he did not seem to want to have decisions ~~made from~~ the bottom up. And the way we normally like to work is that our technical specialists agree with the utilities' technical specialists and then the next level agrees and the next level agree, rather than trying to have a one on one and see if we can't work this thing out, which is what I perceived White's preferred method of working was.

I don't know if I answered that question or not.

Q. On the morning of the 21st, do you have any recollection of Mr. White calling you to confirm that the letter would be delivered and that he had made a change, or multiple changes in the letter based on his conversations with you and Mr. Stello?

A. I don't have any memory now of that have at all. He might well have done that, but I can't recall any specifics.

Q. Do you recall speaking with Mr. Stello that morning when the letter was received about this matter?

A. I don't recall speaking to him either. The way the process would have worked is it would have gone--sometimes it would get delivered to me or to Hugh Thompson, who was the TVA task force leader, so you have to bear in mind that we had a whole staff of people who were really full-time TVA. They were the ones who were in day-to-day contact with their counterparts in TVA and the mail tended to flow through them first before it got to me.

So I just don't remember anything unusual about how I got the letter, but we obviously must have met on the letter pretty quickly and had a senior management review team discussion of what the letter said. And that prompted us to raise the question internally, do we agree with it or not, and what is our position and what should we do, and our deliberations led to the letter back to Steve White about six weeks later.

Q. In essence, if we were to capsulize White's response, he said that they were generally in compliance with Appendix B?

A. Yes, and no pervasive breakdowns and those sorts of terms.

Q. There was a phrase he used, no pervasive break downs in quality assurance, which is a term of art indicating that while there may be individual problems in an occasional weld, that there were not systematic problems which occurred in many of them?

A. I think that is what he probably implied. We would have given the letter to our QA branch--we have experts in QA and who are professional members of the QA Association--and ask them what did he say? All of these have long histories in the business as to what our requirements are and what utilities do and they are experts that you would rely on to at first blush read the letter and interpret it for you.

Q. Now, this issue of what happened on the March 20th, 1986 phone calls and March 21st in the delivery of the letter and the phone calls there, became an issue because you spoke with Hayes, and Hayes went to Sharon Connelly, who is the Director of the Office of Inspector and Auditor--which is the internal watchdog of the NRC--and the concern was raised as to whether Stello's conversation with White has been improper;

correct?

A. Yes.

Q. Subsequent to that, the OIA director, Ms. Connelly, along with an investigator or investigators from her office, met with you and discussed this matter at length?

A. That is my memory. I didn't tell Ben because I wanted Ben to initiate an investigation, but more in the role that he ought to know everything that I knew. He had a different job and Jim Taylor was actually in change of QA reviews in the staff, even though I was the chairman of the group, so he needed to know.

Ben must have told me that he had asked OIA to look into it because of the possible nexus with his investigation, but I somehow became aware of the fact and then I did meet with OIA. And I think Ms. Connelly and at least one other investigator came over and we talked for some time about the circumstances surrounding the letter.

Q. Now, let me stop you right there. The conversations that you had took place in March; correct? The phone conversations and Mr. Stello's conversation with Steve White?

A. They took place around the day of the letter. I think that is the correct month.

Q. Well, would it refresh your recollection if I handed you a copy of Steve White's letter dated March 20th, 1986?

A. Yes. So those conversations did take place in March. Yes.

Q. Now, you became aware subsequent to those conversations that OIA was investigating it based on what Ben Hayes had said?

A. Yes.

Q. Did you know that Hayes had been deposed and his statement taken in the matter?

A. No.

Q. I am going to hand you what I am going to mark for identification as Exhibit 1, which is a document purporting to be a two-page Report of Interview.

[Exhibit No. 1 was marked for identification.]

BY MR. RYAN:

Q. I would like you to look at that and see if you can identify it.

A. Yes, I can. It's a summary of what I told OIA, in 1986, about the matter.

Q. Now, this was the conversation that you had with Ms. Connelly and her investigators?

A. Yes.

Q. Do you see Ms. Connelly's name in anyway reflected as being a participant in the conversation?

A. I don't on here, but I was practically certain that she came over and sat in on that discussion. The way I become involved in investigations pertaining to my office--or my prior office--was that you would get a phone call from OIA needing to talk to you in a very short period of time, and you knew nothing more about the facts or the circumstances, and she would call and schedule and so it would get scheduled and we would meet privately with her and her staff, or just her staff, depending on what level of issue was being investigated.

Q. Well, let me stop you there. This was a high level issue that was being investigated?

A. This was, and I am almost certain she was present at the discussion. So I don't know their preparation. And they come in with many questions and have a discussion somewhat similar to the one we are having now.

Q. With respect to the Report of Interview there, it indicates that you were interviewed on June 10th, 1986. Do you know any reason why OIA would have waited until the middle of June to conduct these discussions with you?

A. No, I don't.

Q. Do these notes on the Report of Interview reflect all of the discussions which took place concerning the Stello-White conversation?

A. I think it's a summary of what took place, but certainly not all of what took place.

Q. For example, the Report of Interview doesn't indicate that you had had a fairly lengthy conversation with White on the same subject that day, the same day as the Stello conversation; correct?

A. That is correct.

Q. Do you have a recollection of indicating the context in which the Stello-White conversation took place by saying, I had my own conversation with this guy on that day?

A. Well, I guess I would have to really rely on the investigators notes of what was said, but I am almost certain I would have told them that Taylor and I both had calls, and that is sort of an important staging area and that Jim Taylor and I had talked about this. So I can't imagine that I didn't tell them I had had a phone call and so had Jim Taylor.

Q. And in fact, one couldn't understand the context of the Stello-White conversation without knowing the whole context of previous discussions that day with other senior managers?

A. I would think so, but I don't really know what is behind OIA's interview. They have certain questions and we answer those and try to be as helpful as we can.

Q. But reading your Report of Interview here, it does not indicate the things that we have talked about this morning that you talked about on that day, which is the context in which that call was made?

A. That is correct.

Q. It doesn't even indicate that Ms. Connelly was present?

A. I didn't see this summary until after the hearings Senator Glenn had on the matter, but that is the usual practice in that staff does not see OIA reports.

Q. Did Mr. Stello ever say anything to you about the OIA investigation? Did he ever say, this is nonsense that I am being investigated for this phone call? Did it ever come up in the context of discussions between you?

A. We tried to avoid discussing this matter, but I am sure he informed me, in the course of the year and a half since that time that he was being deposed by this or that group. But we have not discussed the substance of "I said he said" sort of thing.

Q. When Mr. Stello was conducting his conversation with Mr. White that day, would he have been aware of the OI investigation into the fuel load letter?

A. That is more problematical in that I am not sure he would have been in that we referred matters to OI and, except for a very small cadre of people, they didn't really know what OI was doing with them, so he might not have been fully aware of the scope of Ben's investigation.

Q. Are senior NRC managers aware of the agency's rules concerning ex parte conversations with the regulated community? And is this something that was a familiar subject for you and Mr. Stello to talk about?

A. Well, ex parte, the way it is commonly interpreted, applies only to discussions between the Commission and the staff in contested matters, and so in that sense, it is often brought to your attention by the Commission's legal counsel that matters which are under adjudication, we do not talk to the Commission about. So when we brief the Commission we have counsel at the table to be sure that we don't talk about matters which are under adjudication.

But the rules for what we say to licensees and how we interact with licensees probably could be clearer, and I found in NRR in my years in that job, I had to promulgate guidance on several occasions to try to direct the staff in how they would interact day-to-day with the licensee. So there is not clear Commission guidelines on how the staff interacts with licensees.

Q. Is it in writing?

A. I don't believe it is, other than words to be fair and open. I doubt if there is any real clear guidance on how to interact with licensees.

Q. I have no further questions. Is there anything that I didn't ask you that I ought to ask you or anything that you would like to say that the questions just haven't given you an opportunity to say? Feel free just to tell us anything you would like?

A. Well, I guess two points I would make. This is, I think, the fifth time that I have been asked questions about this and to some extent it is hard to keep straight what I originally thought on the matter versus what someone may be asking me I thought about the matter.

But the first interview was by OIA, and then I never saw the OIA report until a year later, this year. At that time I was only shown my page of the letter. Then when the issue arose again I spent some amount of time with OI investigators, and so we had a what I would call a really thorough discussion of the topic. And then sometime later they asked for a deposition and so I gave a deposition on the matter.

And then later OIA came back and showed me this page and asked me was that my memory of what I had told them and I said yes. And I am just aware of the fact that the Commission is now retaining a special investigator from GAO to investigate allegations of wrong doing within the agency and this matter is on his plate also. So it is getting quite a bit of ventilation.

Q. Does this issue deserve the ventilation it has received?

A. I don't think it does, myself. It seems to me it is putting too much emphasis on that one point. I think there are a lot of other issues that it might be worthy to look into in the structure of the agency and how we interact with people, rather than to focus just on this one phone call in a van, is my own thought.

It does seem that guidance might be useful from the Commission with regard to what is meant by arm's length regulation, and that might be a topic that could be expanded on profitably.

Q. Mr. Stello was not at arm's length in the conversation he had in the van?

A. I didn't think he was at arm's length there, but I thought it didn't keep me from being an arm's length decision maker.

Q. Thank you.

[Whereupon, at 11:45 a.m., the deposition was concluded.]

C E R T I F I C A T E

I, Billy E. Watt , Official Court Reporter for Miller Reporting Company, Inc., hereby certify that I recorded the foregoing proceedings; that the proceedings have been reduced to typewriting by me, or under my direction, and that the foregoing transcript is a correct and accurate record of the proceedings to the best of my knowledge, ability and belief.

Billy E. Watt

Senator WIRTH. Thank you very much, Mr. Chairman. Further, Mr. Stello allowed as how he really did not remember these discussions, although you say of this kind of importance, they were very important discussions.

I find it interesting that you say you never had any serious disagreements with Mr. Stello. If I read through this kind of a record, looking at Mark I on the one time you say, well, there are a lot of other things that could have come up, sometimes he was stronger on safety, I grant you that. This one, it seems to me, changes quite significantly from that statement. I think we will probably hear a little bit more about this from Mr. Asselstine, Mr. Chairman.

Gentlemen, I thank you very much for being here. From my perspective, I appreciate your being here.

Senator EXON. Mr. Denton.

Mr. DENTON. Senator, I did not mean to imply we never had any differences of opinion. We did have differences of opinion, but I was trying to put it in the context of my total knowledge of Mr. Stello and my view of his qualifications for the job.

Senator EXON. Gentlemen, thank you very much. I take it from listening to the questions and your answers, Mr. Denton, that the agency works pretty much like all other agencies of government. There are lots of well-trained, strong-willed people that, in the end, have to come to some kind of a conclusion. It does not seem particularly unusual to me that on some occasions you and Mr. Stello would come to totally different conclusions. That is why we have the Commission, that is why we have him as the chief executive officer, so to speak, working for the Commission.

We have deep divisions from time to time, believe it or not, on this committee, between people who are very, very good friends and generally stand together on issues, but we have differences of opinion. So I do not find it particularly unusual from the standpoint that of all of the hundreds and maybe thousands of decisions you were involved in that I suspect that there were some where there were strong differences of opinion. Is that a fair statement?

Mr. DENTON. Yes, there were. And we would argue about them and resolve them to our satisfaction. I think we both respected each other's opinion, and the most conservative view generally won, conservative with regard to protecting public health and safety.

Senator EXON. And I suspect also, so that the record will show it, the eventual decision on matters like this ordinarily would come up for a vote of the Commission, is that right?

Mr. DENTON. That is correct, sir.

Senator EXON. Thank you.

Senator WIRTH. May I just ask one other question?

Senator EXON. Yes.

Senator WIRTH. Just very briefly, did you ever have any conversations with Admiral White about how to respond to the letter?

Mr. DENTON. Well, it turns out I did, yes.

Senator WIRTH. Do you think it was appropriate for you to talk to Admiral White and not for Mr. Stello to talk to Admiral White?

Mr. DENTON. I thought so at the time since I was in charge of the group responsible for that activity. I thought that he should talk to me about it.

Senator WIRTH. But you said in your deposition that he should not have done it, you should not be answering questions for somebody from the TVA. Which one is it, Mr. Denton?

Mr. DENTON. My view on all licensee responses is it has to be whatever the licensee can support. It has to be his own view. And I think that is what I told Admiral White when he called me. But it turns out that Mr. White had made innumerable phone calls as the investigation revealed, I did not even remember the first time that I talked to him about that. But, in any event, word coming back has to be what the licensee can support. And that is what we would go inspect against. Maybe I have lost the thrust of your question.

Senator WIRTH. Did you effectively coach Admiral White on what to say?

Mr. DENTON. I coached him on what the letter intended, what we were concerned about.

Senator WIRTH. You were asking him the question, and then you told him how you thought—what was the question again?

Mr. DENTON. Did the TVA's quality assurance requirements meet Commission regulations.

Senator WIRTH. And if Mr. White says no, what happens?

Mr. DENTON. Then he had big problems.

Senator WIRTH. He gets convicted of something. Is there criminal activity? What big problems are there?

Mr. DENTON. No, not criminal activity. The plants would not be qualified to operate.

Senator WIRTH. If he says no to your answer, the plants would not be qualified to operate. And if he says yes, what?

Mr. DENTON. Then we would go inspect and see if we could reach the same decision.

Senator WIRTH. And if he had said yes and they were not, then what would happen?

Mr. DENTON. Then we would inspect Admiral White's basis for making that decision, originally.

Senator WIRTH. So Admiral White is clearly between a rock and a hard place on this letter, right? If he says no, things get shut down, and if he says yes, and they are not in compliance, he is in deep trouble, right?

Mr. DENTON. I think in retrospect he should have said he did not know. He had been there such a short period of time he was not able to establish the answer to that question.

Senator WIRTH. So you asked him this tough question and then you coach him on how to fudge the answer, is that it?

Mr. DENTON. Well, his staff had made that statement, so we wanted him to respond whatever he wanted to say.

Senator WIRTH. And what did Mr. Stello tell him to say? Do not answer for a while, put it off, see if you can beat around the bush, or what? What was Mr. Stello advising?

Mr. DENTON. I have been interviewed so often on this topic, Senator, I cannot remember now what Admiral White did say.

Senator WIRTH. If you have been interviewed that often you ought to remember it pretty well, should you not?

Mr. DENTON. No, I think people have asked, "could you have said."

Senator WIRTH. What did Mr. Stello coach Admiral White to say?

Mr. DENTON. Senator, my knowledge of that has faded in the 4 years since that time, but it was investigated by OIA, by OI, by the Senate Governmental Affairs Committee, and by a special investigator.

Senator WIRTH. Maybe you can tell us for the record, that is what we are here for. We are not here for other reasons, we are here just to try to understand what happened in this history. You had your deposition taken under oath, I believe, in 1987?

Mr. DENTON. Yes.

Senator WIRTH. We asked you today if you wanted to review that whole record and you demurred. I just want to try to get a clear and straightforward answer if I can. Admiral White gets this tough letter from you. You say you disagree with Mr. Stello giving some advice to Admiral White, that he should not have done it. But you turned around and gave him the advice anyway. What kind of advice did Mr. Stello give Admiral White?

Mr. DENTON. Senator, I cannot remember today. But what Admiral White sent in was that the plant had met the Appendix A requirements.

Senator WIRTH. Thank you, Mr. Chairman.

Senator EXON. Thank you, Senator Wirth. Gentlemen, thank you for being here. Once again, we appreciate your taking your valuable time to come here and help us out. We appreciate very much your testimony. You are excused. We will now move on to panel three.

Panel three consists of Dr. John Ahearne, a former chairman of the Nuclear Regulatory Commission; Mr. James Asselstine, a former commissioner of the Nuclear Regulatory Commission; Mr. William O. Doub, a former commissioner of the Atomic Energy Commission; Dr. Joseph Hendrie, a former chairman of the Nuclear Regulatory Commission; and Mr. Manning L. Muntzing, a former director of regulations of the Atomic Energy Commission. Gentlemen, we welcome you.

As I have said with the other witnesses, we on the Armed Services Committee consider this a very, very important hearing. We appreciate that people such as yourself, who have intimate knowledge of the situation at hand and the situation before the committee, agreed to come here today. I cannot tell you how much we appreciate the fact that you are here. Also, if any of you have written statements, we will accept all of those for the record without objection. We will start with you, Mr. Ahearne. Thank you for being here.

STATEMENT OF JOHN F. AHEARNE, FORMER CHAIRMAN, NUCLEAR REGULATORY COMMISSION

Dr. AHEARNE. Thank you, Senator. I have previously submitted two letters to the Senate, and so what I would just do right now is make a few comments based upon having sat here this afternoon.

First, three general comments. I do not have the memory of a John Dean. I was in the Nuclear Regulatory Commission 6 to 11 years ago, from 1978 to 1983, so some of the details are obviously going to be a little fuzzy to me.

Second, my background is a technical person, not a lawyer, and so I will have viewed some of the events differently than a lawyer would have viewed them.

And finally, I served both as a commissioner and as chairman, and I will say that the perspective you get as chairman is different than the perspective you get as a commissioner.

There are a few other items that I would like to comment on from what I heard this afternoon. One of the witnesses mentioned that Mr. Stello gave him great pause as a prosecutor and as a civil servant as to whom Mr. Stello thought he served. He saw him as a bully at the NRC with people who disagreed with him. All I can say is that I never had any doubt who Mr. Stello thought he served. I thought he viewed that he served the public. He was, to all my experience, a dedicated servant of the public in all of the senses that that carries with it.

Was he a bully? Bully is a term that has been used a lot. It is obviously a definitional question. As a physicist I always like to ask someone what do they mean by that term? Clearly, Mr. Stello is an aggressive person who challenges very hard, and there are some people who cannot take that challenge. Some people realistically cannot take that kind of challenge just because of their psychological approach, and others because they do not have the information with which to back up their positions.

Mr. Stello is a very strong-willed individual, but as was mentioned earlier by Mr. Denton, he will always argue on the basis of facts, will always stick to the substance of the issue. That was my experience.

Senator Gore, I believe, raised a question. I think he was saying that based upon what he had heard, that he was led to believe Mr. Stello might have been more interested in protecting the industry rather than the public. This was in the question with Three Mile Island. I never had that impression, and I was, of course, in the Commission when the Three Mile Island accident happened and became chairman afterwards. I never had any doubt that Mr. Stello's focus was trying to protect the public health and safety.

It is quite difficult sitting in this kind of environment to go back and think of the tremendous confusion and uncertainty that existed in the months following Three Mile Island. There was a lot of doubt about what had happened. There was a lot of doubt about what had happened to the reactor. There was a lot of doubt about what lessons could be learned that ought to be applied to a variety of other reactors.

You may recall that the B&W reactors themselves were shut down. We were trying to figure out was there a generic problem with reactors. You may recall there was a lot of concern about what lessons could immediately be learned to apply across the whole spectrum of reactors. This large action plan which was developed by the NRC was focused specifically on that. It is in that kind of a context that you have to look at what Mr. Stello might have been doing as far as any specific investigatory process.

There was a mention about the I&E systemic problems. One of the witnesses said they might have been a part of the eventual cancellation of Midland and Marble Hill. My experience was that it was the tough aggressive actions of the NRC that eventually led to those kinds of cancellations.

You have to keep in mind the NRC is not a group of people who sit there on a site constantly checking everything. It is basically an audit review process, and my experience was that that audit review process led to those increased difficulties that those plants had. And as I recall, at least on South Texas which another witness mentioned, the NRC sent a special team headed by Mr. Stello down to South Texas, which was the first break and really caused the increased pressure on South Texas.

Finally, the two other comments. There was prevalent in the NRC when I was there what I thought was a general attitude—and this was an attitude that I had to conclude had grown up over the years at the AEC, ERDA, and NRC, and some of my colleagues on the left may disagree with me on this, they certainly had longer experience than I—but there was a tension between the engineers, who were in the regulatory staff, and the investigators.

Whether it was the Office of Inspection and Enforcement-type investigator or the auditor, OIA, and then later the Office of Investigations, there was this constant conflict in which one group, the engineers, took the attitude that they had to try to make fixes to plants, get hardware improved, fix software programs, and that they thought that the investigators were just getting in the way of improving safety because investigations tended to slow down making those kinds of—taking those kinds of actions.

And specifically there was an attitude—and it was one I tried to counteract when I first came to the NRC—that the Department of Justice was clearly an obstacle. It was not an obstacle in the sense that they went after utilities. There was a view on the engineering staff that the Justice Department, once they got involved and brought in the legal framework of investigation and grand juries et cetera, would put a blanket over trying to approach these safety problems.

The engineers tended to take the attitude, we have to get the safety problems fixed immediately. Maybe it will harm a possible prosecution, but we have to get the safety problems fixed. That was a tension of basic philosophy, and that was relatively pervasive among a large amount of the engineering staff.

My final comments are based upon past performance and future expectations. On past performance my experience with Mr. Stello over 5 years was without a doubt, he had two characteristics: One, extraordinarily technically competent. Joe Hendrie may be upset and disagree. He disagreed with me and I with him a lot anyway, but even with respect to Joe, I found Mr. Stello knew more about reactors and was the most competent technical person I ran into at the agency.

I also never had any doubt that his focus was on safety. I had a lot of disagreements with Mr. Stello. I am not like Mr. Denton in that sense. I disagreed with Mr. Stello a lot. We had a lot of arguments, but there was never any doubt in my mind that Mr. Stello's focus was on the safety, the public health and safety. That was his driving motivation.

The second aspect, I have spent almost the last 2 years chairing a committee for the Department of Energy, an advisory committee on nuclear facility safety. This has given me—I guess opportunity is the term—but I have now seen firsthand a large amount of the problems that exist throughout the defense facilities of the Energy Department, Rocky Flats, Savannah River, and a whole host of other things, and my committee has sent in a lot of quite critical letters.

My conclusion is that the Department of Energy desperately needs someone who is very knowledgeable, who is very tough, who is a very hard worker, and who has a firm commitment to safety. I do not know the worldwide availability of individuals. I do know that if I had been asked who was the person I would want to run that program, Vic Stello would have been the first name that would have come to my mind. Thank you, Mr. Chairman.

Senator **Exon**. Thank you, Mr. Ahearne. Mr. Asselstine.

STATEMENT OF JAMES ASSELSTINE, FORMER COMMISSIONER, NUCLEAR REGULATORY COMMISSION

Mr. **Asselstine**. Thank you, Mr. Chairman. I am appearing today at the committee's request because I gather some of the members of the committee or other Members of Congress have suggested that my experiences with Mr. Stello over my term on the Nuclear Regulatory Commission from 1982 to 1987 might be material to the questions of Mr. Stello's qualifications and fitness to serve as the Assistant Secretary of Energy for Defense Programs. I am pleased to provide whatever information I can to assist you in your consideration of this nomination.

I spent a good portion, Mr. Chairman, over the past couple of days, reviewing portions of the record of your previous hearings on this nomination, and digging through some boxes of files in my basement, all of which I think led me to appreciate the benefits of being in the private sector and having left Government service.

Although I do not have a formal prepared statement, I would like to offer just a few opening comments on the importance of this position, on how it compares to Mr. Stello's previous position as the chief staff officer of the NRC, a few thoughts on the qualifications which I think are needed to fulfill the position of Assistant Secretary for Defense Programs, and finally some observations on Mr. Stello's performance at the NRC which may bear on his qualifications and fitness for this position.

Mr. Chairman, thanks in large measure, I think, to your efforts and those of Senator Thurmond, Chairman Nunn, Senator Warner, and the other members of this committee, many rather extensive safety, health, and environmental problems associated with the defense production facilities, I think, have now been brought to light.

The wide range of weaknesses in the operation of these facilities, including design weaknesses, the deteriorating material condition of the facilities due to the effects of aging, the lack of a complete understanding of the extent of that deterioration and the absence of a complete set of detailed standards to evaluate the safety impacts of that deterioration, the extensive contamination and worker exposure concerns at some of the facilities, the failure to keep pace with evolving safety standards, the failures to address emerging safety issues, inadequacies in training and in the safety culture at many of these facilities, the cumbersome management structure that diffused accountability and responsibility, the absence of an effective system of independent safety oversight, and the adverse effects of years of secrecy, I think, have all been well-documented in recent years. And, many of those problems were described in detail by members of this committee in their opening statements in the previous hearings on this nomination and in the testimony of Admiral Watkins and by Mr. Stello as well.

Taken together, I think, those problems pose an enormous challenge to the person who will fill the position of Assistant Secretary of Energy for Defense Programs. The difficulty of this task, for example, is probably far greater than that of managing the NRC staff of about 3,000 people and directing a regulatory program that is now more stable and settled, and which already includes a detailed set of safety standards and a fairly extensive understanding of the condition of the facilities and the quality of operations being regulated. And my point here is one that I think Senator Wirth made earlier, and that is I think you need to look at Mr. Stello's performance at the NRC, and I think that information does have a bearing on his capabilities and ability to meet the pretty awesome challenges of this position.

It seems to me that if he is to succeed, the person who is chosen and confirmed to fill this position must have a number of special qualifications and capabilities: He must be technically capable, both to identify and correct the safety and operational shortcomings of the existing facilities in the near term, and to develop and implement a longer-term modernization program; he must also be experienced in managing a complex industrial production process; he must be fair and openminded and willing to listen to differing points of view; he needs to be a consensus builder with the ability to correct what appear to be fairly serious morale problems and to rebuild a strong and effective safety culture within the Department of Energy defense programs organization; he must be sensitive to evidence of intentional wrongdoing and committed to identifying and addressing instances of deliberate violations of law or safety requirements; he must have the credibility to overcome the justifiable distrust of the Department of Energy by the public and by State officials and to rebuild what are now somewhat strained relations with some key States in which these facilities are located; he must be someone who can devote his full attention and energies to the important task of identifying and correcting the safety and environmental problems at these facilities; and, finally, and perhaps most importantly, he must have a strong and consistent record of sound judgment to make what will be a very difficult set of decisions to balance the competing and sometimes conflicting objectives of meeting materials production goals and ensuring that these facilities are operated in a safe and environmentally acceptable manner.

I think the standard given the importance of the responsibilities and the challenges that this person faces need to be high. It needs to be somewhat higher than whether the individual has been found guilty of violating laws or regulations, and it has to be a higher standard than simply deferring to the judgment of the President and even to the Secretary of Energy, despite his fairly compelling plea for this nominee last month.

I must tell you that based upon my own experience with him at the NRC, I have very mixed feelings about Mr. Stello and his ability to meet such a set of qualifications. I like Victor personally, and I have a high regard for his technical capabilities. I think that he did a very effective job in responding to the Three Mile Island accident. He was also a significant contributor along with a number of senior NRC staff members in the development of the post-TMI safety improvements. And I agree with his statement before this committee that as a result of these changes, the approximately 120 commercial nuclear power plants now in operation in this country are now operating at higher levels of safety and reliability and with fewer operating problems and events.

I also was impressed with and supported a number of actions initiated by the NRC staff under Mr. Stello's direction during my time on the Commission which were aimed at correcting operating problems at the commercial plants, and a good example is the NRC's decision to shut down the Peach Bottom reactors when operators were found sleeping.

On the other hand, I must tell you that I had some disagreements with Mr. Stello and with the judgment he exercised in several instances, and those disagreements caused me to vote against his appointment to be the NRC's Executive Director for Operations. Specifically, I found at times that Mr. Stello was not always an aggressive and arms' length regulator of the industry. In addition, his personality and management style often tended to generate confrontation rather than consensus building, and he was not always open to considering differing points of view, and finally, he was not sensitive to or a strong supporter of the Commission's obligations to deal with wrongdoing by NRC licensees.

I would refer you to several examples, all of which have been reviewed or investigated by one or more committees of Congress; the first of those had to do with Mr. Stello's involvement in the interpretation of the NRC's fire protection regulations in 1984; the second had to do with the series of conflicts with the NRC's Office of Investigations that I think were documented in the hearing held by the Governmental Affairs Committee in 1987, chaired by Senator Glenn; and the third has to do with Mr. Stello's overly narrow interpretation of the Commission's responsibilities and authority to address wrongdoing issues, and that was documented in some correspondence, I think, with Senator Glenn's committee as well. I do not intend to go into those in detail, and instead what I would do is simply refer you to the existing record.

There is one final point that I would like to mention, and that is the Fortuna matter. That is something that has occurred since I left the Commission. It is, as far as I can tell, under investigation by at least three committees of Congress. At least two of those have issued some form of report thus far.

I have two basic concerns about this matter. First, if the reports that have been issued are accurate and if the conclusions they reach are the correct ones, then I think they do raise significant questions about Mr. Stello's judgment and those questions, I think, do go to his fitness for this position, and, second, I find in Congressman Kostmayer's letter to you—to the committee at least—that he raises questions about the accuracy of Mr. Stello's testimony before a committee of the House of Representatives in this matter. If that leads to further protracted investigations or other actions against Mr. Stello, I think you need to think seriously about whether he is going to have the ability to focus his attention and energies on doing this important job.

With that, Mr. Chairman, I think I will stop and pass it on to the next one. Thank you.

Senator EXON. Thank you. Mr. Bradford, you are next. Thank you for being here.

STATEMENT OF PETER BRADFORD, FORMER COMMISSIONER, NUCLEAR REGULATORY COMMISSION

Mr. BRADFORD. Thank you, Mr. Chairman. Since I am here at the committee's request, and since as I have told the committee staff, the most significant of the allegations that have been made regarding Mr. Stello came after I left the NRC, my statement will not be lengthy.

I should note also that it is neither delivered on behalf of the New York State Public Service Commission nor the State of New York.

I served on the Nuclear Regulatory Commission from 1977 until early 1982. During that time, I very much respected Mr. Stello's technical abilities. My own relationship with him was usually professionally satisfactory and always personally friendly. While I had misgivings about some matters, notably, the Three Mile Island accident investigation, I considered his handling of these matters to be within the mandate given to him by a Commission majority and/or a Commission chairman with whom I disagreed on those occasions.

In the years that followed, I read with regret and concern the allegations from responsible people regarding subverted or sidetracked Justice Department investigations, the threatening of the director of the NRC's Office of Inspections, and the peculiar investigation of the allegations regarding Roger Fortuna. While I hope that these allegations are resolvable, I want also to be clear that I do not think that you should confirm Mr. Stello until you have investigated these matters thoroughly and have satisfied yourselves that his role in them is not the one that has been alleged.

The shocking disclosures about Department of Energy nuclear safety failings that continue to roll forth from heretofore secret files on a weekly basis constitute one of the most extraordinary long-term betrayals of public trust in American governmental history. Indeed, it may have no domestic equal.

Officials of the Atomic Energy Commission and later of the Department of Energy, officials who either knew better or certainly should have known better, repeatedly compromised the public's health and safety around many different facilities in many different States. Their decisions also exposed their own workers to excessive levels of radiation, and they exposed U.S. troops and U.S. citizens to excessive radiation during the testing of nuclear weapons.

In each instance, the Atomic Energy Commission or Department of Energy officials gave assurances of safety to many people who trusted these assurances and remained unknowingly in jobs or locations that endangered their own health and lives and their families as well. Acting under cover of secrecy, acting in the name of national security, these officials put many Americans in peril as great as the threats which they claimed to be guarding against.

Upon taking office last year, Secretary of Energy James Watkins observed that he was going to need to change the entire culture within the Department of Energy. In this he was correct, and he deserves our support when he acts accordingly. He is, of course, entitled to wide latitude in his choice of subordinates, especially when, as here, he has personally committed himself to the nomination. Nevertheless, the confirmation process carries with it the imprimatur of the U.S. Senate. That imprimatur sets a tone for what is expected, a tone that lasts over time and transcends a single speech or a single vote.

There is no way that the culture at the DOE will change if you confirm Victor Stello without first credibly disposing of allegations to the effect that he has sought to intimidate investigators, has used nuclear safety concerns for personal ends, and has thwarted Justice Department criminal investigations or NRC licensees.

Such behavior would typify the culture that has gotten the Department of Energy into the profound mess in which it is wallowing. It is a culture of carelessness, of ignored and suppressed evidence, of people in a hurry, of production ends justifying risk-taking means, and of skeptics and critics often abused. It is, in short, a culture built on the very types of conduct alleged by Mr. Hayes, Mr. Greenspun, Mr. Fortuna, and others.

If the people running these facilities sense that the U.S. Senate is prepared to confirm an individual to take charge of the clean-up with these charges unresolved, the message that you send about the seriousness with which you view alleged conduct inseparable from the causes of the DOE's past failings, would be unmistakably on the side of treating the facilities as being safe because they are needed. You would thereby undercut the sweeping serious reforms that are necessary. Only a rigorous investigation of a sort that cannot be conducted solely through a public hearing process can lay the basis for Mr. Stello's confirmation in a context in which will be able to contribute effectively to the important task that would await him.

Because I liked Victor Stello in the 5 years that I worked with him and because I respect his dedication, I hope his nomination survives this scrutiny. But that end should not be the principal objective. You would do the citizens around these facilities no service. You would do the Department of Energy and those DOE employees who are genuinely concerned with putting things to right no service. You would not even do a service to Secretary Watkins or to Mr. Stello if you confirmed him without first resolving these matters completely and in a credible way.

If, on the other hand, you set high standards and hold this nomination to them, you will support constructive change at the DOE. If you do not, the consequences for the facilities and for the DOE's mission will be incalculably harmful. You and other congressional committees are then likely to be overseeing a saga of further disclosures, expensive disappointments, and irradiated citizens for many years to come.

Victor Gilinsky has observed that we have created a system that deals competently with pipe cracks but averts its eyes from wrongdoing. Through the years that system, especially on the DOE side, which has tended to function in secret, has taken its overall tone in part from the expectations or lack thereof of Congress.

This nomination is a watershed event in that process, for it is the first chance you have had since the major disclosures to make new standards and expectations clear. In this endeavor a thorough and fair investigation and a clearly articulated correlation between your yardstick and your decision might—just might—begin to rekindle public confidence in some aspects of nuclear decisionmaking.

A result in either direction that does not encompass a clear resolution of these allegations will deepen the swamp into which all future nuclear facilities, civilian and military, seem to be settling at a pace paradoxically proportional to the number of shortcuts that the Government tries to take on their behalf. Thank you.

Senator EXON. Thank you, Mr. Bradford.

[The prepared statement at Mr. Bradford follows:]

PREPARED TESTIMONY OF PETER A. BRADFORD

Since I am here at the Committee's request and since, as I have told the Committee staff, the most significant of the allegations that have been made against Mr. Stello came after I left the NRC, my statement will not be lengthy.[1]

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In the years that followed, I read with regret and concern the allegations from people in responsible positions regarding subverted or sidetracked Justice Department investigations, the threatening of the director of the NRC's office of inspections, and the peculiar investigation of the allegations regarding Roger Fortuna.

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In each instance, AEC or DOE officials gave assurances of safety to many people who trusted these assurances and remained unknowingly in jobs or locations that endangered their own health and lives, and their families as well.

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Acting under cover of secrecy, acting in the name of national security, these officials put Americans in peril as great as the threats which they claimed to be guarding against.

The principal officers of DOE and AEC have not usually mislead the Congress and the public about these facilities because they are scheming liars. Instead, over the years, immense apparatuses of self delusion have been constructed.

The keystone of these malignant edifices within the AEC and its successors, DOE and the NRC, is the principle that bad news must not flow upward.

To this end, decisions about the tone of rewritten reports, about bonuses and promotions, and questions not to ask, about investigations not to initiate are all key tools. The ignoring, sidetracking and sometimes even the harassing of those with differing professional views are not isolated exceptional incidents in such edifices. They are instead among the building blocks, and some of them have been alleged against Mr. Stello.

In the end, those at the top—those who deal regularly with the public, the press and the Congress—are largely unaware of the problems and concerns that exist in the hardware and among those who deal closely with it.

Agency public assurances as to levels of safety can be as sincere as they are wrong.

It is a process that creates lies without liars, a process of immaculate deception.

Upon taking office last year, Secretary of Energy James Watkins observed that he was going to need to change the entire culture within the Department of Energy. In this he was correct, and he deserves our support when he acts accordingly. He is, of course, entitled to wide latitude in his choice of subordinates, especially when, as here, he has personally committed himself to the nomination.

Nevertheless, the confirmation process carries with it the imprimatur of the U.S. Senate. That imprimatur sets a tone for what is expected, a tone that lasts over time and transcends a single speech or a single vote.

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If you do not, the consequences for the facilities and for DOE's mission will be incalculably harmful. You and other Congressional committees are then likely to be overseeing a saga of further disclosures, expensive disappointments, and irradiated citizens for many years to come.

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In this endeavor a thorough and fair investigation and a clearly articulated correlation between your yardstick and your decision might, just might, begin to rekindle public confidence in some aspects of nuclear decisionmaking.

A result in either direction that does not encompass a clear resolution of these allegations will deepen the swamp into which all future nuclear facilities—civilian and military—seem to be settling at a pace surprisingly—surprisingly?—proportional to the number of shortcuts that the government tries to take on their behalf.

Senator EXON. Mr. Doub.

STATEMENT OF WILLIAM O. DOUB, ATTORNEY, DOUB, MUNTZING AND GLASGOW

Mr. DOUB. Mr. Chairman, thank you very much. I am very pleased to have the opportunity to be here today to say a few words in support of the nomination of Victor Stello to undertake the responsibilities of the Assistant Secretary of Energy for Defense Programs.

I would like to address the committee briefly on why I think that this nominee is, in fact, exceptionally well-qualified for the position for which he has been nominated. Unfortunately, I will have to be somewhat general, because I have been out of government now for more than a decade.

On November 21, on my own initiative, and at no one's suggestion, I wrote a letter to the chairman of this committee, Senator Nunn, urging the confirmation of Mr. Stello, and presumably that letter has been made a part of the record.

Senator EXON. Without objection, so ordered.

[The letter referred to follows:]

DOUB, MUNTZING AND GLASGOW,
CHARTERED, ATTORNEYS AT LAW,
Washington, DC, November 21, 1989.

Senator SAM NUNN,
Chairman, Senate Armed Services Committee,
Washington, DC.

DEAR SENATOR NUNN: As a former commissioner of the Atomic Energy Commission, and one vitally interested in our country's defense programs, I have followed with considerable interest the Armed Services Committee's confirmation hearings concerning Victor Stello to head the Department of Energy Defense Programs.

Frankly, Senator, I must say I find the arguments against Mr. Stello's confirmation to be totally lacking in substance. Mr. Stello is an effective administrator with a record of several decades of proven accomplishment. I vividly recall his considerable contributions when I was a commissioner of the United States Atomic Energy Commission during the period 1971 to 1974. At that time, the commission was involved in one of the most controversial rulemakings in the history of civilian nuclear power involving the emergency core cooling systems of light water reactors. It was in connection with that rulemaking that the old Atomic Energy Commission, for the first time in history, sat as a commission to hear final arguments. Throughout the course of that protracted proceeding, Mr. Stello and his colleagues demonstrated considerable dedication to their work and sensitivity to its important public aspects.

As we know, it is difficult to get competent individuals to serve in government. It would seem that the arguments against Mr. Stello tend to turn on what some would describe as an aggressive personality. While I would personally not describe Mr. Stello's personality as aggressive, it would seem to me that what government needs is, indeed, more individuals concerned in getting tasks accomplished—and this is particularly true at this time with regard to the Department of Energy's defense programs.

In your committee's deliberations, I hope you will look at Mr. Stello's total record, consider the magnitude of the tasks Secretary Watkins has asked him to undertake, as well as the careful review of Mr. Stello given by the Secretary prior to his nomination. Finally, I hope you will consider the views of myself and others with whom he has worked closely throughout his career. The committee should be concerned, I believe, with the total picture of the individual and not be distracted by aspects of his personality or isolated instances where perhaps greater discretion might have been preferred.

If further hearings on this matter are scheduled, I would, obviously, be willing to appear and testify at the convenience of the committee.

Sincerely yours,

WILLIAM O. DOUB.

Mr. DOUB. Thank you, sir. A significant portion of my professional career has been spent in the field of regulation, and a few words on my regulatory background experience may be appropriate.

In the early 1960s I organized and was the first chairman of the Minimum Wage Commission of Baltimore City. I subsequently served as People's Counsel to the Maryland Public Service Commission and later as chairman of that commission. I also served for a number of years as a member and vice chairman of the Washington Metropolitan Area Transit Commission. From 1971 to 1974 I was a commissioner of the Atomic Energy Commission. Since 1974 I have practiced law primarily, but from time to time have undertaken various part-time Federal responsibilities. For example, I currently serve as Federal representative of the Southern States Energy Board reporting to the Secretary of Energy and the chairman of the Nuclear Regulatory Commission.

I have through the years served on a number of regulatory boards and commissions. I have had the opportunity to work closely with regulators at both the State and Federal levels, and I would like to think that I know something about regulation and regulators. At the Atomic Energy Commission I had the responsibility, the lead responsibility among the five commissioners, for the regulation of civilian nuclear power in the United States. That is the civilian end of the business.

I therefore had the opportunity to work with Mr. Stello during my years at the AEC, and I have observed his performance as a nuclear regulatory since then. I have some personal knowledge of Mr. Stello's professional performance as a regulator, and I have been in a position through the years, particularly, to observe his character and the manner in which he has handled himself in the extraordinarily demanding position he recently held as Executive Director for Operations at the NRC. In all respects Mr. Stello is an outstanding public servant of clearly demonstrated capability, and I can really think of no one more qualified to undertake the inordinate responsibilities that will be thrust upon his shoulders in attempting to restructure the Nation's defense programs and to solve the accumulated problems brought on by years of neglect.

Now, I would like to tell you briefly why I have come to these conclusions. Mr. Stello's career essentially covers the initiation and ultimately widespread deployment of nuclear power in this country beginning around the second half of the 1960s. He has been there. He has had a direct management responsibility with respect to most of the controversial aspects of the implementation of nuclear power commercial purposes. He has been a leading player in regulating commercial nuclear power, from the widespread debate over emergency core cooling systems in the early 1970s through the creation of the NRC itself in 1975, to the Commission's handling of the accident at one of the Three Mile Island nuclear units. Mr. Stello was there.

Mr. Stello has been a major participant in the development of the Commission's philosophical and programmatic culture mentioned by other witnesses today, which places public safety, health, and environmental matters at the forefront of the decision-making process. The culture of safety and environment first has not, as we know, always been a hallmark of the Nation's defense nuclear programs. The NRC, under its regulatory jurisdiction, has approximately 108 civilian nuclear power reactors licensed to operate.

Mr. Stello is one of only a few people who has the unique experience over almost two-and-a-half decades of experience, and is willing to undertake the task of instilling cultural changes. His attention to the environment, health, and safety within the DOE weapons program will enable it to fulfill its responsibilities as they are currently seen. Mr. Stello knows what needs to be done, and he is willing to do it. It would be a great loss to the country if Mr. Stello should be denied this opportunity to serve.

Now, just a word on what I have heard today, if the chairman will let me. I have heard sincere people question Mr. Stello's management style, the statements in the earlier record and today's that he is a bully or abusive or worse.

The point that these individuals make actually goes right to the core of good regulation. Regulation is not a job for someone who wants to be popular. Built into the structure of regulation are the very dynamics of tension, tension among the regulated industry, the public, and the regulator.

It is a search for a balance which characterizes the good regulator, balance in the regulatory sense in achieving a result which is consistent with the law, regulatory rules, procedures, and public policy. Regulation is a delegated function of the legislative branch of Government. And consequently, I would think that this committee would understand the nature of competing tensions.

Thank you, sir.

[The prepared statement of Mr. Doub follows:]

SUMMARY REMARKS OF WILLIAM O. DOUB, DOUB, MUNTZING AND GLASGOW, WASHINGTON, DC

Thank you, Mr. Chairman, I am very pleased to have the opportunity to appear today in support of the confirmation of Victor Stello to undertake the responsibilities of Assistant Secretary of Energy for Defense Programs.

I would like to address the Committee briefly on why I think this nominee is exceptionally well qualified for the position for which he has been nominated by President Bush. On November 21, 1989, on my own initiative, I wrote the Chairman of this Committee, Senator Nunn, urging the confirmation of Mr. Stello, and, presumably, my letter has been made a part of the record.

A significant portion of my professional career has been spent in the field of regulation and a few words on my regulatory background and experience may be appropriate. In the early 1960's, I organized and was the first Chairman of the Minimum Wage Commission of Baltimore City. I subsequently served as People's Counsel to the Maryland Public Service Commission and later as Chairman of that Commission. I also served for a number of years as a member and Vice Chairman of the Washington Metropolitan Area Transit Commission. From 1971 to 1974, I was a Commissioner of the Atomic Energy Commission. Since 1974, I have practiced law primarily but, from time to time, have undertaken various part-time federal responsibilities. For example, I currently serve as Federal Representative to the Southern States Energy Board (SSEB) reporting to the Secretary of Energy and the Chairman of the Nuclear Regulatory Commission. I have, through the years, served on a number of regulatory boards and commissions. I have had the opportunity to work closely with regulators at both the state and federal levels. I believe I know something about regulation and regulators.

As an Atomic Energy Commissioner, I had the lead responsibility for the regulation of the civilian nuclear power program in the U.S. I, therefore, had the opportunity to work with Mr. Stello during my years at the Atomic Energy Commission and I have observed his performance as a nuclear regulator since then. Not only do I have some personal knowledge of Mr. Stello's professional performance as a regulator, but I have been in a position through the years to observe his character and the manner in which he has handled himself in the extraordinarily demanding position he recently held as Executive Director for Operations at the Nuclear Regulatory Commission. In all respects, Mr. Stello is an outstanding public servant of clearly demonstrated capability, and I can think of no one more qualified to undertake the inordinate responsibilities that will be thrust upon his shoulders in attempting to restructure our country's defense programs and to solve accumulated problems brought on by benign neglect.

Now I would like to tell you briefly why I have come to these conclusions. Mr. Stello's career essentially covers the initiation and ultimately widespread deployment of commercial nuclear power in this country beginning in the second half of the 1960's. He has had direct management responsibility with respect to most of the controversial aspects of the implementation of nuclear power for commercial purposes. He has been a leading player in regulating commercial nuclear power, from the widespread debate over emergency core cooling systems in the early 1970's, through the creation of the Nuclear Regulatory Commission, itself, in 1975, to the Commission's handing of the accident at one of the Three Mile Island nuclear units. Mr. Stello has been a major participant in the development of the Commission's philosophical and programmatic culture which places public safety, health and environmental matters at the forefront of its decision-making process. The culture of safety and environment first has not, as we know, been a hallmark of the nation's nuclear programs.

The NRC has under its regulatory jurisdiction approximately 108 civilian nuclear power reactors licensed to operate. Mr. Stello is one of only a few people who has the unique experience and is willing to undertake the task of instilling cultural changes within the DOE weapons program to enable it to fulfill its responsibilities consistent with safety and protection of the environment. He knows what needs to be done and he is willing to do it.

It would be a great loss to the country if Mr. Stello should be denied this opportunity to serve.

Senator EXON. Thank you, Mr. Doub. Mr. Hendrie.

STATEMENT OF JOSEPH HENDRIE, FORMER CHAIRMAN, NUCLEAR REGULATORY COMMISSION

Mr. HENDRIE. Thank you, Mr. Chairman. I have filed letters with Senator Nunn and Senator Warner on the subject of this nomination.

Senator EXON. I believe those are a part of the record, and if not, they will be accepted at this time.

[The material referred to follows:]

JOSEPH M. HENDRIE,
CONSULTING ENGINEER,
Bellport, NY, November 8, 1989.

Hon. SAM NUNN,
Chairman, Senate Armed Services Committee, U.S. Senate,
Washington, DC.

DEAR SENATOR NUNN: I want to comment on the nomination of Victor Stello to be Assistant Secretary of Energy for Defense Programs.

I have known Mr. Stello for a long time, personally and professionally. He worked for me in the early 1970's when I headed the technical review office of the AEC regulatory staff, and again in 1977–81 when I was Chairman and Commissioner of the Nuclear Regulatory Commission.

I think Mr. Stello is ideal for the Defense Programs job because of his skills, his experience, and his temperament and character. I am sorry to see him leave the

NRC, which will miss him, but he will be a great help to Admiral Watkins as the head of DP.

He is a world-class reactor safety expert, with a systems viewpoint. He is one of the best I know in tracking down safety problems and dealing with corrective actions.

He is a good manager and a natural leader. He has come up through the ranks at the NRC because of his managerial abilities and his force of character. As a manager he makes decisions and follows up on them. He does not hesitate to reprimand his staff when needed or praise when deserved.

He has extensive experience in managing government staff units and in managing difficult nuclear safety and regulatory issues. This is an especially important asset in a prospective head of DP in view of current problems in those programs.

He is a strong personality, self-confident, with great energy and force of character. He speaks his mind. He does not suffer fools gladly. He has a strong personal devotion to nuclear safety and expects both his staff and the licensees to be as diligent and safety-minded as he is. He is especially apt to be short-tempered with people he suspects of bending the truth or pursuing other agendas.

Defense Programs, particularly the reactors, need a strong, seasoned leader with the personal expertise and experience to know what must be done and the strength of character to do it. A good but non-expert manager will be at the mercy of his staff, as will an expert without the requisite personal force and drive. Mr. Stello fits those needs better than anyone else I know.

I have known Mr. Stello personally for almost two decades. I know him as a man of unvarnished (sometimes painfully so) truth and strong devotion to duty. I recommend him for the Defense Programs position without qualification and hope, for the nation's sake, that your Committee will favor his nomination.

Sincerely,

J.M. HENDRIE.

Mr. HENDRIE. I will draw just briefly from them here. I have known Vic Stello for a long time, personally and professionally, something like 17 years. He worked for me in the early 1970s when he was a member of the staff of the Office of Technical Review of the AEC regulatory staff and again in 1977 through 1981, when I was chairman and a commissioner of the Nuclear Regulatory Commission.

I think Vic Stello is ideal for the Defense Programs job. He is ideal because of his skills, his experience, his temperament, and his character. He is a world-class reactor safety expert with a systems viewpoint, and one of the best I know in tracking down safety problems and dealing with corrective actions.

He is a good manager and a natural leader. He has come up through the NRC staff because of his managerial abilities and his force of character. As a manager, he makes decisions and sticks to them. He does not hesitate to reprimand his staff when they need it, and he does not hesitate to praise them when they deserve it. He has extensive experience in managing government staff units and in managing difficult nuclear safety and regulatory issues. This is an especially important asset in the prospective head of Defense Programs in view of the current problems.

He is a strong personality. He is self-confident, he has great energy and force and character. He speaks his mind. He does not suffer fools gladly. He has a strong personal devotion to nuclear safety and expects both his staff and the licensees to be as diligent and safety-minded as he is. He is especially apt to be short-tempered with people he suspects of bending the truth or pursuing other agendas.

Defense Programs needs a seasoned leader. I think Mr. Stello would be superb at the job. I congratulate Admiral Watkins for having convinced him to accept the nomination. I have known Vic

Stello personally for almost two decades. He is a man of unvarnished truth and strong devotion to duty. I recommend him to you in the strongest terms. Thank you, Mr. Chairman.

Senator EXON. Thank you, Mr. Hendrie. Mr. Muntzing.

STATEMENT OF L. MANNING MUNTZING, FORMER DIRECTOR OF REGULATIONS, ATOMIC ENERGY COMMISSION

Mr. MUNTZING. Mr. Chairman, it is a pleasure to be here to testify concerning this nomination of Mr. Victor Stello, and I would like to have my full statement added to the record, please.

Senator EXON. Without objection, that is so ordered.

[The prepared statement of Mr. Muntzing follows:]

PREPARED STATEMENT BY L. MANNING MUNTZING, DOUB, MUNTZING AND GLASGOW, CHARTERED, WASHINGTON, DC

My name is L. Manning Muntzing, partner in a law firm in Washington, D.C. I am pleased to be here to testify concerning the nomination of Mr. Victor Stello, Jr. to be Assistant Secretary of Energy for Defense Programs.

My nuclear background includes serving as Director of Regulation at the U.S. Atomic Energy Commission from 1971–1975. The responsibilities of that position parallel those of the position at the Nuclear Regulatory Commission of Executive Director of Operations, a position held until recently by Mr. Stello. In addition, I have served as President of the American Nuclear Society, an organization of scientists and engineers concerned with nuclear technology in this and other countries. I also have served as Chairman of the Council of Scientific Society Presidents, an organization whose members represent over a million scientists, and have served as Secretary-Treasurer of the American Association of Engineering Societies, an organization whose members represent over a million engineers. I am, of course, speaking only on my own behalf today.

My relations with Mr. Stello began in 1971 when we were both at the Atomic Energy Commission in the civilian regulatory program. At that time an important safety issue concerned Emergency Core Cooling Systems. The Atomic Energy Commission decided to hold a rule-making proceeding on the subject to determine the appropriate safety standards that the Commission should adopt for Emergency Core Cooling Systems. I appointed Mr. Stello chairman of the team that presented the regulatory staff's evidence in public hearings. These hearings were some of the most extensive hearings on civilian safety issues that the Commission had every conducted. Mr. Stello was outstanding in this responsibility seeking opinions from all sources, opening the Commission's documents for thorough public scrutiny and managing a most complicated issue. In the end Mr. Stello and his team concluded that the criteria that had been used were not conservative enough and recommended tighter safety requirements. These were ultimately adopted by the Commission and have stood the test of time, having been challenged in the courts and in practice. More recently as additional research results and operating information have been analyzed, the Commission has determined that in some respects the criteria were too restrictive. However, Mr. Stello's concern for safety considerations led him to support the stricter requirements in the ECCS rulemaking.

I have observed his activities through the years as he has undertaken positions of increased responsibility. His approach to safety issues is with an open mind that is objective and exploratory. He insists upon solid scientific data and analysis before making a decision. Once a consensus emerges from the best available technology, he is decisive and prepared to make a decision.

My opinion based upon direct and personal knowledge over the last 18 years is that Mr. Stello has made an outstanding contribution to commercial nuclear safety during his career. While people have urged greater dispatch for various reasons such as need for power and cost of delays, Mr. Stello has always put safety first. He has been an excellent manager in this regard not only making tough decisions but seeing that they were implemented. He has a regulator's approach to nuclear power which means that there must be an insistence upon defense in-depth concepts that include effective quality control.

It is my opinion that Mr. Stello's background, experience and approach to issues will mean that for the defense programs of the Department of Energy he will be a tough manager insisting upon effective safety requirements. Just as the public under his leadership at the Nuclear Regulatory Commission has been well protected, so will the public be protected from the risks associated with the defense nuclear programs. He has a wealth of experience with regulations and an extensive knowledge of commercial nuclear safety requirements. He is capable of seeing that the safety programs of the Department of Energy defense programs operate so as to protect the public health and safety.

Mr. MUNTZING. I served as Director of Regulation for the U.S. Atomic Energy Commission in the 1970s, a job which is comparable to that which Mr. Stello has held recently.

My relations with Mr. Stello began in the early 1970s when we were both at the Atomic Energy Commission in the civilian regulatory program. At that time, an important safety issue concerned emergency core cooling systems. The Atomic Energy Commission decided to hold a rule-making proceeding on this subject to determine the appropriate safety standards that the Commission should adopt for emergency core cooling systems.

I appointed Mr. Stello chairman of the team that presented the regulatory staff's evidence in public hearings. These hearings were some of the most extensive hearings on civilian safety issues that the Commission had ever conducted. Mr. Stello was outstanding in this responsibility, seeking opinions from all sources, opening the Commission's documents for a thorough public scrutiny, and managing a most complicated issue.

In the end, Mr. Stello and his team concluded that the criteria that had been used were not conservative enough—were not conservative enough—and recommended tighter safety requirements. These were ultimately adopted by the Commission and have stood the test of time, having been challenged in the courts and in practice.

More recently, as additional research results and operating information have been analyzed, the Commission has determined that in some respects the criteria were too restrictive. However, Mr. Stello's concern for safety considerations led him to support the stricter requirements in the emergency core cooling systems rulemaking.

I have observed Mr. Stello's activities through the years, as he has undertaken positions of increased responsibility. His approach to safety issues is with an open mind that is objective and exploratory. He insists upon solid, scientific data and analysis before making a decision, and once a consensus emerges from the best available technology, he is decisive and prepared to make a decision. In my opinion, based upon direct and personal knowledge over the last 18 years, Mr. Stello has made an outstanding contribution to commercial nuclear safety during his career.

While people have urged greater dispatch for various reasons, such as need for power and cost of delays, Mr. Stello has always put safety first. He has been an excellent manager in this regard, not only making tough decisions but seeing that they were implemented. He has a regulator's approach to nuclear power, which means that there must be an insistence upon defense in-depth concepts that include effective quality control.

It is my opinion that Mr. Stello's background, experience, and approach to issues will mean that for the defense programs of the Department of Energy he will be a tough manager—a tough manager insisting upon effective safety requirements. Just as the public under his leadership at the Nuclear Regulatory Commission has been well protected, so will the public be protected from the risks associated with the defense nuclear programs.

He has a wealth of experience with regulations and extensive knowledge of commercial nuclear safety requirements. He is capable of seeing that the safety programs of the Department of Energy Defense Programs operate so as to protect the public health and safety. Thank you, Mr. Chairman.

Senator EXON. Thank you, Mr. Muntzing. We will now start our questions from members of the Senate to the panel. I wish to thank the panel for being very concise and very straightforward with your comments, and I think you can tell by the careful listening that the members of the Armed Services Committee gave that we are very much interested in your testimony. I can also tell from what each of you had to say that you recognize that we consider this a very, very important issue that we are working on here, and the fact that you have had experience in this field and experience with the nominee is very interesting to the members of the panel.

Let me ask this question first, and I believe I will ask it of Mr. Asselstine. Mr. Asselstine, I recognize that—let us see, what years did you serve on the Commission?

Mr. ASSELSTINE. From 1982 to 1987, Mr. Chairman.

Senator EXON. Do I take it, then, you were the last person to serve on the Commission of those testifying today, is that right?

Mr. ASSELSTINE. That is correct.

Senator EXON. During your term, did Mr. Stello, in your opinion, generally follow the leadership and the dictates and the wishes of the majority of the Commission, which is made up of five Commissioners? Did he generally follow what at least was the majority view of yourself and the other four Commissioners, or was he off doing things on his own?

Mr. ASSELSTINE. Mr. Chairman, I think in general he followed the dictates and directions of a majority of the Commission, and I think one of the things I was fairly careful about in expressing my concerns about Vic is to focus on things that were really his activities, rather than where he was simply following the directions of the majority of the Commission.

It is no secret that in some instances I did not always agree with the directions of a majority of the Commission. I think that there was too much holding back of the NRC staff in pursuing new safety initiatives during much of that time, and Vic had a lot of the responsibility for doing that.

For part of those years, he was head of a group called the "Committee to Review Generic Requirements" where he exercised increasingly heavy control over the staff's efforts on an on-going basis to develop and impose new safety requirements. I really do not fault him for that, because I think what he was doing is basically what a majority of the Commission wanted him to do.

Senator EXON. Is it fair then to say that any shortcomings that took placed during his tenure in this very important post with the NRC, that if there were shortcomings, if there were mistakes made—and I put in "if there were." I am sure there were some. We all make mistakes. Would the majority of the Commission be equally responsible for those as Mr. Stello?

Mr. **Asselstine**. In terms of the general policy of the agency, I would say a majority of the Commission was ultimately responsible and accountable, but I also mentioned a few specific instances where I had some fairly fundamental disagreements with Vic's judgments, and in those instances I think my differences really go to his performance, rather than to following the policies set by the Commission.

Let me mention a couple of those, and one of them I will pick up on from Mr. Denton's testimony, and that had to do with the whole matter of the conversations with Mr. White. I have not gone back and reviewed in detail a couple of the boxes that I have on the TVA, but I can tell you, based upon my memory, that my recollection at the time was that Mr. Stello's conversation, whether it violated NRC regulations or law, was inappropriate, that it just did not make sense.

When you were asking a licensee to respond under oath on whether they complied with the Commission's requirements, where we had evidence from within the Tennessee Valley Authority that there were a number of instances in which they did not comply, it did not make sense for the senior NRC staff officer to be coaching this guy or talking with him and giving him feedback on the accuracy or validity of his response under oath. The reason why that is not a good idea is because it hampers your ability after the fact to take enforcement action against the TVA if you found out that the letter was false.

One of the things Mr. Denton forgot to mention is that since I left the Commission, ultimately the NRC found that that letter was false and ultimately the NRC did take enforcement action. But I think one of the concerns that Mr. Denton had at the time, and it was a concern that I shared, was that those kinds of conversations first cut out the lower-level staff people that were directly involved in and responsible for looking at the TVA, but even more importantly they could compromise the NRC's ability to take enforcement action against the licensee that provided a false answer and a false response.

That is an example where I do not think Victor was following a direction from the Commission. I think he was acting on his own, and what I thought he did represented poor judgment, in my opinion.

Another example had to do with the NRC's fire protection regulations. In 1984 the NRC had issued an interpretive document that interpreted the NRC's fire protection regulations. A group of utilities did not particularly like those regulations. They had challenged those regulations in court, seeking to overturn the regulations in a number of respects, and had lost, and after that they had come to see senior NRC staff people, including Mr. Stello, and asked that the NRC staff issue a new interpretation that in some respects tried, or sought to give them the relief that they had unsuccessfully tried to obtain from the courts.

In a meeting without hearing from the technical experts, the NRC's fire protection engineers, Mr. Stello said yes, write the document, accommodate their concerns, do what they want, without ever giving the opportunity to the real technical experts within the agency to state their views. A number of those experts filed differing professional opinions, something that does not do your career any good at the NRC, and objected very strongly to the interpretations and to their consequences in terms of their inability to take enforcement action and also to inspect our licensees at the time. That is another example of something that I would characterize as bad judgment. I do not think Victor was following a specific direction or a mandate from the Commission, I think he was acting on his own, and that is the kind of thing that I would have concern about.

I think the final area that I would mention are these ongoing conflicts between Victor and the investigators, and that is another example of something where I think he was really operating on his own.

Senator EXON. Thank you. My time is up. Senator Warner.

Senator WARNER. Mr. Chairman, I just wish to thank this panel for taking the time here in this particularly tough holiday season to come in and provide us with their viewpoints. I think that across the board, it has been a very objective and balanced critique of a very interesting individual.

We come down to the bottom line, however. This man is the President's choice and the Secretary of Energy's choice, and while you took the vote count in my absence, I think a vote of the majority would be in favor of Mr. Stello. We simply use that as a criteria around here because I think all of you probably had far more extensive experience with Mr. Stello than we have had through the brief hearings that we have on this subject, but we want to be thorough and we want to be careful, and we are appreciative of your contribution. Thank you.

Senator EXON. Thank you, Senator Warner. Senator Wirth.

Senator WIRTH. Thank you very much, Mr. Chairman. I, too, want to thank you all for being here. We greatly appreciate it. Mr. Doub and Mr. Muntzing, both of you were on the old AEC, is that right?

Mr. DOUB. That is correct.

Mr. MUNTZING. Yes, Senator.

Senator WIRTH. And you are now law partners, is that correct?

Mr. MUNTZING. Yes, sir.

Senator WIRTH. And you are predominantly involved with commercial nuclear power and DOE contractors, is that right?

Mr. MUNTZING. Yes, Senator.

Senator WIRTH. What are you doing now, Mr. Hendrie? I remember you from my days in the House of Representatives.

Mr. HENDRIE. I consult for various nuclear utilities, and I am still—I am only half retired from Brookhaven National Laboratory, and so I still have an association with a DOE laboratory.

Senator WIRTH. Yours was a very eloquent recommendation for Mr. Stello. I thought that was a very impressive job. Thank you very much.

Mr. HENDRIE. I feel very strong about it.

Senator WIRTH. I gathered that. You, Mr. Bradford, and Dr. Ahearne were all on the Commission at the time of TMI, is that right?

Mr. Bradford. That is right.

Senator Wirth. Could you describe to us what the controversy is, and maybe I do not know who—you were chairman at the time, Mr. Hendrie?

Mr. Hendrie. Yes, I was chairman at the time the accident occurred and thereafter, most of 1979. John Ahearne replaced me on December 7, 1979.

Senator Wirth. And so you were chairman at the time that all of this controversy surrounding the information that had been given to the Commission by the individual who talked about the falsification of the data was there, Mr. Hartman. You were chairman during that period of time?

Mr. Hendrie. I expect I must have been, assuming that that stuff came to the Commission before December.

Dr. Ahearne. I do not think so.

Senator Wirth. Well, let me just go back. It is my understanding that it was in May 1979, is that correct, in which Mr. Hartman brought these allegations to the committee staff, is that right?

Dr. Ahearne. The time I do not remember. I am just hearkening back to something that one of the first witnesses said. I think it was Mr. Sinclair who pointed out that whoever it was—I think it was Mr. Sinclair who went to interview Mr. Hartman because Mr. Cummings, who was the head of OIA, had said that I had asked him to do that, and the only reason I could have done that is if I was chairman.

Senator Wirth. I think that is the testimony. When did you become chairman?

Mr. Hendrie. Early December 1979.

Senator Wirth. So, the Hartman business would have occurred while you were chairman and you were a member of the Commission.

It is my understanding that what happened in this situation—and maybe any one of the three of you or others can correct me or add to this—and I would invite you to do so—is that Mr. Hartman came to the staff of the Commission with the allegations that there had been falsification of the leak data, is that not correct? Is that not what kicked all the controversy off, was Mr. Hartman coming to the Commission? And that happened in the spring of 1979, and then it is my understanding that that famous report, NUREG 0600, was filed in August 1979, after Mr. Hartman's allegations came in. There was no reference to Mr. Hartman's allegations in NUREG 0600, and apparently, Mr. Ahearne, you asked very specifically about this of Mr. Stello, as to why none of this was included in the report. It is our understanding that you asked him about this on two different occasions.

Dr. Ahearne. Senator Wirth, you have a clear benefit over me. I do not recall that, but I did not research any records, so I do not know.

Senator Wirth. Do any of you know any of this history?

Mr. Hendrie. I certainly do not recall it in the sort of detail you are quoting, Senator.

Mr. Bradford. I recall the first two parts of it, Senator. I do not recall the inquiries from John Ahearne.

Senator WIRTH. Did you ever have any explanation as to why the Commission was not filled in on this? It is my understanding that you only became aware of the Hartman allegations which were true, that the staff only let you in on them when Mr. Hartman said he was going to go to NBC and be on NBC, is that correct? Do you remember that?

Mr. BRADFORD. I also have not checked any records, and the sum total of my recollection of the Hartman matter at this time is essentially the points you brought up, plus that I did feel once I did learn of the allegations that we certainly should have known of them sooner. To be any more use to you than that, though, I would have to go back and check my files and the various reports that were written afterwards.

[Information referred to follows:]

145A 935T

1990 JAN 2 [illegible]

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION
ALBANY 12223

PETER A. BRADFORD
CHAIRMAN

THREE EMPIRE STATE PLAZA
(518) 474-2530

January 11, 1990

Senator Sam Nunn
United States Senate
303 Dirksen Building
Washington, D.C. 20510

Dear Senator Nunn:

At the Senate Armed Services Committee hearing on the nomination of Victor Stello on December 19th, I was asked to review my files for any material that would shed light on the sequence of events during 1979-80 by which the commissioners of the Nuclear Regulatory Commission became aware of the statements by Harold Hartman regarding the falsification of the primary system water loss rate at Three Mile Island Unit 2.

Because Commissioner Gilinsky and I expressed concern about other aspects of the TMI accident investigation early in 1980, I am inclined to think that I became aware of the Hartman allegations between March and May 1980. I must, of course, have known of the allegations when they were referred to the Justice Department in May, 1980. Had I known of them before March, I would almost certainly have mentioned them in the other memoranda and letters regarding accident investigation shortcomings that I sent in early 1980.

Mr. Hartman's first statement to the NRC's Special Inquiry Group (the group charged with investigating Three Mile Island) was in May, 1979. A memorandum (attaching Hartman's May 1979 statement) that I sent to the NRC's general counsel in December, 1980 (with copies to the Commissioners and to Mr. Stello) makes clear that I was disappointed in the failure of the Special Inquiry Group to have followed up on the allegations. I can find nothing that pinpoints when or from whom I first learned of them.

Senator Sam Nunn
Page Two
January 11, 1990

As I testified to the Armed Services Committee on December 19th, I have a vague memory that the Hartman allegations were originally called to my attention not by the NRC staff but by an individual outside of the NRC. I also have a vague recollection that these allegations came to public attention as a result of a radio or television talk show interview with Mr. Hartman in Pennsylvania. I have enclosed a 1983 letter from me to Mr. Stello on this subject.

The allegations were clearly serious and should have been pursued when they were first made. After the NRC referred the allegations to the Justice Department in May, 1980, I saw no need for NRC involvement as long as the FBI investigation continued. That investigation did continue until after I left the Commission in March, 1982.

I'm sorry not to be more precise in reconstructing the chain of events. However, I have checked my files quite thoroughly, so any further information would have to come from NRC files or the recollections of others. If the matter is of sufficient importance, I would be glad to review any material compiled by the Committee staff to see if it brings back further recollection on my part.

Sincerely,

Peter Bradford

P.S. As I indicated to Ms. Goodman, the account of the Hartman matter in the book Safety Second by the Union of Concerned Scientists (pp.131ff) seems to jibe with my own more limited recollection.

ka/189-15

cc: Sen. John W. Warner
Sen. Timothy E. Wirth
Victor Stello

[illegible]

STATE OF MAINE
PUBLIC UTILITIES COMMISSION
242 State Street
State House Station 18
Augusta, Maine 04333
(207) 289-3831

November 10, 1983

Victor Stello
Deputy Executive Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear ~~Mr. Stello~~ Victor:

Since I continue to receive inquiries regarding the description of my state of knowledge of the Hartman allegations that is contained in your June 15 memorandum to the files, I think I should set forth the one qualification that I mentioned to you when we talked in mid-October.

Specifically, your description of my state of knowledge is accurate as far as it goes. However, I did indicate that my awareness of the seriousness of the Hartman allegations came in substantial part from Henry Myers, who mentioned the allegations repeatedly to me around the time that they became public.

I am quite confident that I did not know of Tim Martin's views. As one who is currently the chairman of a regulatory agency, I am flabbergasted that the then-Chairman of the NRC would not have shared such knowledge with his fellow Commissioners if, indeed, your memorandum's point # 2 is correct.

Sincerely,

Peter

Peter A. Bradford

PAB/mm

CC: Nunzio J. Palladino, Chairman,
  U.S. Nuclear Regulatory Commission
 Representative Morris K. Udall,
  Chairman, Committee on Interior and Insular Affairs,
  U.S. House of Representatives
 Representative Edward Markey, Chairman,
  Subcommittee on Oversight and Investigations,
  Committee on Interior and Insular Affairs,
  U.S. House of Representatives

ATTACHMENT 2

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

JUN 15 1983

MEMORANDUM FOR: Files

FROM: Victor Stello, Jr.
Deputy Executive Director
Regional Operations and Generic Requirements

SUBJECT: HARTMAN ALLEGATIONS

In preparing responses to the memo from Commissioner Gilinsky dated May 31, 1983, regarding the Hartman Allegations, I communicated with three of the Commissioners who were in office at the time of our investigation into the Hartman Allegation beginning in March of 1980.

The purpose of the telephone conversations was to attempt to gain an understanding of the general impression each of the Commissioners had regarding the Hartman Allegations.

These impressions are reported below:

1. Commissioner Bradford could not recall specific conversations on the subject but was aware that they were discussed and had the general impression that the Hartman allegations were serious and might have grave consequences.
2. Commissioner Ahearne recalled specific conversations between myself and he, who at that time was Chairman. He indicated that he was not surprised that Tim Martin held a view that he stated in a Commission meeting on May 24, 1983, and did have recollection of conversations on this subject.
3. Commissioner Hendrie did not have specific recollection of conversations but he did have general recollection that he was fully informed at that time and offered to provide a letter to the Commission if needed. I indicated that if that would be necessary I would communicate with him later.
4. Commissioner Kennedy was unavailable since he was out of the country and was not expected to return until June 20, 1983.

The remaining Commissioner at that time was Commissioner Gilinsky, and since the response was being prepared for Commissioner Gilinsky, no attempt was made to get his recollection.

Victor Stello, Jr.
Deputy Executive Director
Regional Operations and Generic
Requirements

Senator **Wirth**. The history of this gets even more complicated. Mr. Hartman comes and talks to the staff, right? The staff does not fill you all in. The staff report is done. The staff report has no mention of these allocations which were later proved to be true. Mr. Hartman, after all of this, goes to the staff and says hey, wait a minute, I told my superiors. None of them brought it up. They did not bring it up to you. He says a little later, early 1980, I am going to go sing to NBC because that is the only place that I can have this issue aired. Something is truly amiss. So, in the process of his going there, then finally this gets out into the public, and that is when the FBI gets called in. You know, was there some way. So, is there some kind of basic significant cover-up of this instant. All right.

The FBI is involved for a long period of time, but still there is no investigation of this by the NRC even though the FBI is in looking at this sort of thing. The staff still does not look at this question. The staff later claims well, we could not do it because it was under investigation by the FBI, but the FBI had called the NRC and said to them, go ahead and complete your own investigation. I mean, this went on for about a 3-year period of time, at least, in which there was no investigation of this done by the NRC itself.

Now, do any of you know if that is a correct accounting of the history? I mean, here we had the leak verification coming from a variety of places and yet there was no investigation of this by the NRC. Is that correct? Do you all have any memory of that?

Mr. **Hendrie**. I really do not remember it, Senator, and I would not agree with the version that you presented here without a rather careful review of the records. I furthermore—I am absolutely unable to tell you, but what the staff came and told me, that there had been allegations of fiddling with the leak, confinement leak rate tests. It would have been a small potatoes matter at the time. We had had a major reactor accident, and the emphasis of the agency and its staff was to try to track down why and what we had to do about the other operating plants at the time.

Senator **Wirth**. The leak rate allegation of the falsification of data which, as I understand it, the utility, Metropolitan Edison, was convicted of criminal falsification later on down the line, and all of that was small potatoes?

Mr. **Hendrie**. It had essentially nothing to do with the accident and was, therefore, of considerably less interest to us than the aspects of the accident that might reflect on what we should do with the other operating plants. There were very clear questions about whether we should shut the industry down, and we wanted to know what the particulars of the accident were and what had gone on, and that was the thrust. The fact that the utility's people had, as it turned out later, been fiddling with some containment leak rate results had nothing to do with the accident, and I will point out furthermore that in spite of their fiddling, the containment worked just fine. Superbly, I would say.

Senator **Wirth**. So, you are telling us this whole TMI incident just was not important?

Mr. **Hendrie**. I am telling you that for the investigators, for whom these criminal investigations are the whole of life, it was a big deal. In terms of the operating nuclear power industry in this country, it was not.

Senator WIRTH. My time has expired, Mr. Chairman.

Dr. AHEARNE. Could I comment? Two things first, Senator Wirth. I honestly cannot recall the events. Your description could be accurate. I cannot remember. There were so many things happening during that time, to try to go back and recollect, I cannot do that.

I think Dr. Hendrie just gave a fervently—certainly a reflection of the attitude of a large amount of the staff at the time that we have to find out what should be done with all these reactors. I do not think I would go as far as he did in saying that afterwards in retrospect that that was so minor an event, but at the time right after the accident, it would have been put into second place trying to figure out are there some major changes that have to be made right now for all of these reactors.

Mr. BRADFORD. Could I just add a word, Senator? My recollection of the substantive issue is that it was a little different, that these were not containment leak rates that were being talked about and that they did, in fact, play some role in misleading the operators during the accident. Beyond that I think that once they came under FBI investigation, my view at that time was that that was where they would be dealt with, and they would wind up being processed through the FBI and the Justice Department. But I think I left the Commission before that process was concluded, so I am not going to be of much more help to you either.

Senator WIRTH. I think you are reflecting more accurately the record and the importance of this and what this led people to believe about the safety of the whole action that this data had been falsified, and if there was a pattern of falsification of data, then there probably could have been. It is easy to Monday-morning quarterback, but there could have been a more aggressive examination of what was going on at TMI and what was a near disaster, which everybody agrees with of a probably catastrophic nature that we came to. I would suggest this probably from everything that I have read about this is more than has been described as small potatoes, but that is not the issue. It is not Mr. Hendrie's testimony or Mr. Hendrie's recollection, but the performance of the staff and Mr. Stello in this operation. Thank you, Mr. Chairman.

Senator WARNER. Mr. Chairman, I wonder if I might be permitted to refer to the FBI report.

Senator EXON. Why don't you go ahead then, and I will try and finish up.

Senator WARNER. Apparently there is some question at this point in time among the staff, and I would simply say that the FBI did not find any cause for prosecution in this matter.

Senator EXON. Thank you, Senator Wirth. Thank you, Senator Warner. I am going to ask some questions. I took it from your testimony, Mr. Bradford, that you gave Mr. Stello high grades and high marks all the time that you worked with him, and basically your reservations were with the allegations that have been made since that time that you said should be cleared. In a nutshell, is that your testimony?

Mr. BRADFORD. I indicated that we had our occasional disagreements when I worked with him, but that I took those, by and large, to be areas in which he was carrying out Commission policy. Yes, sir, if this hearing were being held at the time that I left the Commission, I would have no reservations about your confirming him.

Senator Exon. Let me ask this question, because throughout this hearing and previous hearings that we have had there has been accusations or assertions or implications that Mr. Stello was simply too cozy with the industry. Can any of you describe any situation—let me repeat that—can any of you describe any situation in which the NRC staff was divided on its recommendations on any regulation or enforcement matter, and if there were such instances, can you recall when Mr. Stello advocated a course of action that was tougher on the industry? What I am trying to get to is whether or not and how relevant this continued testimony is that we have that he was soft on the industry. Do you recall a situation where Mr. Stello was tougher than either the staff or the members of the Commission were on a particular issue?

Mr. Hendrie. Senator, there was not a safety issue that came up before the staff in my time, both as, in effect, chief engineer of the AEC's regulatory staff, and again as chairman and the commissioner of the NRC—there was not an issue that came up that there were not differences of opinion on how to treat it. Some people wanted to fix it one way, some people thought it did not need to be fixed, and some people wanted to fix it a second or third or fourth way. There were always differences. Sometimes Vic came down on what would have turned out to be an easier side on the industry and at other times on the harder side on the industry.

Senator Exon. So you say he came down both ways?

Mr. Hendrie. He would come down both ways. I think that most of us who tried to judge these things fairly and objectively found ourselves sometimes on one side of that argument and sometimes on the other. I do not think you can make a thing out of that coziness argument.

It seems to me that fairly early in my chairmanship, as a fairly newly appointed head of the Office of Inspection and Enforcement, Vic Stello brought in the first half million dollar-plus civil penalty against a utility. And we were likely to have dropped our socks at the size of that. Those were days when we got to fine people $5,000 a day. I think he got up to what, something over half a million? Palisades had left a hole in the containment for 18 months. Vic said that is a big, big, serious violation. That is not a $5,000 violation. That is $5,000 every day. And it had run for a long time.

So I do not think you can make a thing out of this coziness business. The people that do not like Vic Stello or do not like the nuclear industry will say every time you talk to a utility fellow, that is cozy. They seem to expect the regulators to act as some sort of prison guards.

Well, it is not a criminal population, gentlemen. That is a responsible civilian industry out there. And the great majority of people in it are trying to do a good job and do the right thing. They occasionally do things wrong and every once in a while some fellow really makes a mistake and does something wrong, and the regulation needs to be strong and fair. But simply because you talk to them, it does not make it "cozy."

Senator Exon. Dr. Ahearne?

Dr. Ahearne. I would say that Vic did have difficulty keeping an arms-length relationship, which is what many regulators believe is appropriate because when he saw problems he wanted them solved. I think he would tend to then get aggressive and try to push very hard to get those problems fixed. This sometimes could be viewed as cozy, because it is going directly to the source of the problem. I can think of several examples, Midland being one, Marble Hill being another, South Texas being another, where his recommendations were tougher than I think the Commission was willing to eventually come out on.

The one area probably that is reflective of some of the concerns is that Vic's constant approach was to improve the safety of a plant, to improve the safety of an industry, to improve the safety of operations. In so doing, if it was an alternative of making this plant safe versus carrying on an investigation of an individual, he saw that there was a conflict between the two, he would always go for making the plant safe. It is not necessary to always have a conflict between the two, but as I tried to reflect earlier in my presentation, I think that there was a whole atmosphere coming out of the way the NRC operated as saying that there might be a conflict between the two, and so there was this big emphasis to make sure you get the plant safe.

Senator Exon. Thank you, Dr. Ahearne. Senator Warner.

Senator Warner. Mr. Chairman, the committee counsel have given us a recommendation as to how we treat this FBI report until we can go back to the Bureau, but for the time being we will just include it in the executive record and identify it as a report bearing the date of July 1, 1986. And in my judgment, I think it throws a very clear light on this question, and I urge all members of the committee to refer to that part of the executive report.

Senator Exon. Without objection, that is so ordered. Which means that members of the committee can see this, but it will not be part of the public record until we have cleared it with the FBI. Do you have any further questions?

Senator Warner. None.

Senator Exon. Senator Wirth.

Senator Wirth. Thank you very much, Mr. Chairman. Just for the purposes of the record, Commissioner Ahearne, I have a memo from the NRC which states as follows: "The Commission was briefed twice during August and October 1979 on issues relating to the pre-accident leak rate calculations. During the October 1979 briefing, Commissioner Ahearne asked Victor Stello," and it goes on from there. And this is one of these important areas where you were there and I was not. I am just looking at documents. I am doing the best I can to try to figure out what this is all about.

It does seem to me that what happened at Three Mile Island was a very significant incident and was an enormous watershed in the nuclear power industry in this country. And we are still suffering from it. Whether one is, as it has been suggested, an anti-nuclear or in the hire of anti-nuclear lobby groups, or whatever the ideologues are allegedly doing, or pro-nuclear, or wherever you are, this was a very important time.

Dr. Ahearne. Oh, it absolutely was.

Senator **Wirth**. And that is why I am trying to get an understanding of what happened with Three Mile Island and leak rates and ultimately the conviction of Metropolitan Edison. Mr. Asselstine, what were you doing prior to joining the NRC?

Mr. **Asselstine**. I was on the staff of the Senate Environment and Public Works Committee from 1978 to 1982, and one of the things that I did there was serve as the co-director of the Senate's investigation of the Three Mile Island accident.

Senator **Wirth**. And who had brought you into the Senate?

Mr. **Asselstine**. Oh, let's see, I worked for the minority members on Environment and Public Works, and so it was basically Senator Stafford and Senator McClure originally. Senator McClure left the Nuclear Regulation Subcommittee and Senator Simpson joined the subcommittee just prior to the Three Mile Island accident.

Senator **Wirth**. I am just establishing your Republican bona fides. That is all. [Laughter.]

Could you, if you might, fill us in on the Admiral White situation, why that was important, because I have been trying to get at the bottom of why TMI was important, and the leak rate falsification, and it seems to me a pattern of not informing the Commission about that. Why was Admiral White and the TVA investigation—which apparently you were responsible in part for unearthing—can you tell us what happened and why that was important?

Mr. **Asselstine**. Yes, Senator. I think there were growing signs in I guess it was the late-1984 early-1985 time frame that there were some fundamental problems at the Tennessee Valley Authority's nuclear program. That was originally going to be the largest single nuclear program in the country. I think they were going to build something like 17 reactors. It turned out they ended up with five completed, at least as of this point, and you have some that are still in limbo. But there were signs in early 1985 that there were some fairly serious problems, both in their construction program, particularly at the Watts Bar plants, and also in their operating program at Brown's Ferry and at Sequoyah.

I became concerned about that and one of the things that I did, as well as a number of my colleagues or former colleagues on the Commission, was to go out and visit plants and talk to people who had knowledge and information about what was going on. Because, quite frankly, at this point, I really was not satisfied that the NRC staff was being as aggressive about the TVA or quite frankly that they had all the information.

So I went to the TVA and I met with a group of people within the Tennessee Valley Authority that had the responsibility for overseeing the quality assurance effort. And this group within the TVA had the obligation to go out and independently review what was going on within the TVA and report up to the senior management of the TVA about the adequacy of the construction program.

Those people gave me a fairly startling presentation. And the presentation basically said that the Tennessee Valley Authority was not complying with the NRC's quality assurance regulations. Those are the regulations that are intended to make sure that a plant is built in accordance with the NRC's regulations. It is the check-and-balance approach, and it is carried out by the company, by the licensee, and the NRC simply comes in and inspects from time to time to make sure that everything is going well.

This internal TVA group had a series of areas, electrical, concrete, as I recall, there were welding—there were a whole series of these areas, and in every case they said there are fundamental problems, the problems have been going on for some time, they have not been corrected, and it is clear to us that this construction program is going forward and it does not meet the NRC's regulations. And that was a fairly fundamental conclusion.

Senator **Wirth**. This is where the phrase "Third World construction"—some place in all of this I read that. It was a very scathing indictment of the construction of the power plants.

Mr. **Asselstine**. That is correct. There were some NRC staff people along on the trip with me, and I asked them after the presentation, what do you think about that? And their conclusion was we are really amazed and that is a fundamental difference from everything that we have been hearing from the TVA in the past.

So I came back to Washington after the trip. I told senior NRC staff people about what we had found. I said the information was also passed on to the regional inspectors who had come along with me. And at that point the NRC senior staff became very upset about this and they said, well, we immediately have to ask the TVA to tell us in writing, under oath, whether this information is true or not. Because if it is true, we have to think about whether we can continue to allow the construction effort to go on at that plant, or whether we have to stop things and get them sorted out.

A letter was sent to the company requiring that they provide information within a fairly short period of time on whether this information was true or not. I think at about this time Admiral White came in to head the the TVA nuclear program. He asked for some additional time to prepare a response. He conducted a review, and he submitted a letter which said that this information was not true and that the TVA was in compliance with the Commission's regulations. He did not say I do not know. He did not say I have to do a much more detailed analysis to determine whether or not this information is true. He did not say there are some serious questions about whether it is true or not, and I want to get to the bottom of it. He said it is not true, and that is the answer to your question. There were some supporting materials to explain his answer.

The concern, I guess, involving Mr. Stello had to do with what Mr. Denton related to you earlier, that he overheard a telephone conversation in which Mr. Stello was discussing the the TVA response before Admiral White sent the letter in.

And originally there was an investigation of this matter. As I said previously, my own concern about it had to do with the matter of judgment. Whether or not there was any violation of law or regulations, you have to ask yourself, does it make sense for the NRC senior staff officer to be discussing a response with the licensee in advance, when the response is going to be investigated and reviewed by the NRC; and if it is incorrect or false, it is going to be the subject of enforcement action to try and get the situation turned around.

It turned out that in fact the letter was false and enforcement action ultimately was taken against the TVA. I do not believe it was against Admiral White. It all happened sometime after I left the Commission.

Quite frankly, I always believed the information that I had been given in the briefing. I think if the NRC had been more aggressive and more forceful in dealing with that information when it originally came out, everyone would have been better off.

I think the Tennessee Valley Authority and its rate payers would have saved a lot of money. It took a long time to get those problems addressed. I am still not convinced they are entirely corrected. Many of those plants are still not in operation. Watts Bar is not in operation at this point.

And that is an example of where I do not think the NRC was being—the NRC staff—was being as aggressive as it should have been, and Mr. Stello engaged in some particular actions on his own part that I think represented questionable judgment.

Senator **Wirth**. Thank you, Mr. Asselstine. My time has expired. I want to come back and just summarize that very briefly, but I will do that in a minute. Thank you.

Senator **Exon**. Thank you, Senator Wirth. I assume that Dr. Ahearne, Mr. Bradford, and Mr. Hendrie would not know this question from memory. If you do, fine. I would like to ask the three of you who were members of the Commission during the Hartman allegations, if you could check your files and furnish for the record the date or time period when you each were informed of the allegations by Mr. Hartman, by the NRC staff. Do any of you know when that was offhand?

Dr. **Ahearne**. No, Senator, and I will check my relatively skimpy files to see what I have.

[Information referred to follows:]

COPY TO SHERRI

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Sigma Xi, The Scientific Research Society
345 Whitney Avenue New Haven, Connecticut 06511
(203) 624-9883 FAX (203) 772-1523

1990 JAN 10 AM 10 38

January 8, 1990

Senator J. James Exon
Senate Armed Services Committee
222 Russell Building
Washington, D. C. 20510-6050

Dear Senator Exon:

In the December 19, 1989 hearing concerning the nomination of Victor Stello to be Assistant Secretary of Energy for Defense Programs, you requested I and other witnesses to look into our personal files to see whether we had any information concerning "the Hartman matter". I have done so and enclosed are the three items that I found in my records. These are a letter to Peter Bradford, responding to a letter of his to Victor Stello about which Vic had called me; the Bradford letter; and a memo to the files that I had written on November 18, 1983.

Frankly, I do not recall anything about these episodes. However, this information enclosed is the only information that I could find in my personal files. I am also forwarding a copy of them to Mr. Stello.

I also enclose two letters on the Stello nomination I sent to Chairman Nunn. If possible I would appreciate them being included in the Committee Record.

If I can be of any other assistance, please let me know.

Sincerely,

John F. Ahearne

/brs
Enclosures
cc: Victor Stello

Monday, November 1st

Mr. Peter Bradford:

Dear Peter:

Vic Stello has just called me to inform me of a letter from you expressing amazement ("flabbergasted"), apparently because you read Stello's memo for the record on the Hartmann matter as indicating I had information I withheld from you (and the other Commissioners). I believe that is an incorrect interpretation.

As I told Vic Stello when he called (and have recently verified this with him), my recollection is as follows:

(1) a few days ago (when Cummings called to tell me of the problem that had arisen, and sent me a copy of Stello's memo for the record), I wrote down my recollections — they are attached.

(2) the discussion I clearly recall is the one I refer to — and my memory is that we all were present (or, at least, the Commission was — whether all 5 were, I don't remember).

(3) Beyond that, my memory is of Stello's operating procedure — he, to the best of my knowledge, always told each of us what he told me to do. When I was not Chairman, he would come around on his rounds — when I was Chair...

3) Beyond that, I have no specific memories (it has been several years!)

(The reason I remember the Stello argument on DOJ referral is that it so soon became apparent he had been correct — the DOJ took an incredibly long time. Without that to flag the Stello argument, I probably would have forgotten it.)

However, I am sure the Commission took the charges seriously — else why send them to the DOJ? And certainly we all knew they had been sent.

I hope this clarifies things for you. Stello is sending over a copy of your letter — I may have more to add after I see it.

Sincerely,

John

Monday, November 21st [1983]

Mr. Peter Bradford:

Dear Peter:

Vic Stello has just called me to inform me of a letter from you expressing amazement ("flabbergasted"), apparently because you read Stello's memo for the record on the Hartmann matter as indicating I had information I withheld from you (and the other Commisioners). I believe that is an incorrect interpretation.

As I told Vic Stello when he called (and have recently verified this with him), my recollection is as follows:

(1) A few days ago (when Cummings called to tell me of the problem that had arisen, and sent me a copy of Stello's memo for the record), I wrote down my recollections--they are attached.

(2) The discussion I clearly recall is the one I refer to--and my memory is that one all were present (or, at least, the Commissioners were--whether all 5 were, I don't remember).

(3) Beyond that, my memory is of Stello's operating procedure--he, to the best of my knowledge, always told each of us what he told one of us. When I was not Chairman, he would come around on his rounds--when I was Chairman, he would tell me that he was going on to the _____________.

(4) Beyond that, I have no specific memories (it has been several years!)

(The reason I remember the Stello argument or DOJ referral is that it so soon became apparent he had been correct--the DOJ took an incredibly long time. Without that to flag the Stello argument, I probably would have forgotten it.)

However, I am sure the Commissioners took the charges seriously--else why send them to the DOJ? And certainly we all knew they had been sent.

I hope this clarifies things for you. Stello is sending me a copy of your letter--I may have more to add after I see it.

Sincerely,

John

CHAIRMAN
Peter A. Bradford

COMMISSIONERS
Ralph H. Gelder
Cheryl Harrington

STATE OF MAINE
PUBLIC UTILITIES COMMISSION
242 State Street
State House Station 18
Augusta, Maine 04333
(207) 289-3831

November 10, 1983

Victor Stello
Deputy Executive Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear ~~Mr. Stello~~ Victor:

Since I continue to receive inquiries regarding the description of my state of knowledge of the Hartman allegations that is contained in your June 15 memorandum to the files, I think I should set forth the one qualification that I mentioned to you when we talked in mid-October.

Specifically, your description of my state of knowledge is accurate as far as it goes. However, I did indicate that my awareness of the seriousness of the Hartman allegations came in substantial part from Henry Myers, who mentioned the allegations repeatedly to me around the time that they became public.

I am quite confident that I did not know of Tim Martin's views. As one who is currently the chairman of a regulatory agency, I am flabbergasted that the then-Chairman of the NRC would not have shared such knowledge with his fellow Commissioners if, indeed, your memorandum's point # 2 is correct.

Sincerely,

Pete

Peter A. Bradford

PAB/mm

CC: Nunzio J. Palladino, Chairman,
U.S. Nuclear Regulatory Commission
Representative Morris K. Udall,
Chairman, Committee on Interior and Insular Affairs,
U.S. House of Representatives
Representative Edward Markey, Chairman,
Subcommittee on Oversight and Investigations,
Committee on Interior and Insular Affairs,
U.S. House of Representatives

Memo to file November 18, 1983

Subject: Hartmann matter

The following is my best recollection of the events concerning Hartmann's charge:

- I do not remember either the Hartmann name or the leak rate falsification coming up as an issue in either the Kemeny or the Rogovin reviews. (Apparently they did internally to the Rogovin review, as indicated by the staff memo from Ornstein) (name added after receiving Oct 17 ~~R~~ Roberts letter to Markey, with attachment) 11/21
- After Hartmann's public announcement, I+E (Stello) began to look into the charge.
- The NRC referred the charge to the Dept. of Justice. To do so, the Commission overrode Stello's argument. I recall a Commission meeting* in which Stello argued against such a referral because I+E would have to stop looking into the matter and that would make it hard for them to conclude their review of the TMI accident. When told DOJ would move right ahead, Stello expressed skepticism — he believed DOJ would take a long time. * At least it was in the big meeting room 11/21
- DOJ asked for the NRC to provide a knowledgeable technical person to help them. We did — I didn't recall who this — but then we found out (as we should have realized in advance) that once that person began helping the DOJ, before a grand jury, we could no longer talk to that NRC person about TMI.

- At some time in this period [illegible]

[redacted]

lawyers, to talk to the NRC.

So, in summary, my recollection is that

- the 4 or 5 members of Hartmann's charges were ~~when~~ he went public
- I+E obviously took the charges seriously — else Stello wouldn't have signed out to give to DOJ
- the Commission took them seriously — that's why we did give them to DOJ.

now, when Tim Martin made his statement at the May Commission meeting

- I was not surprised that someone on the staff believed the allegations. Typically, the judicial mind of the NRC — which includes most of the Commissioners — keeps an open mind on charges until the investigations have been completed — However the staff usually reaches a conclusion quickly — certainly some of the staff — hence I was not at all surprised that someone in the staff believed the allegations.

HOWEVER — I was totally surprised
(1) to find the person identified as being so closely involved — Tim Martin — not only believed it, but
(2) stated that Hartmann's charges were true — i.e., it was a fact.

Furthermore — and I don't have a meeting transcript — my impression was that Martin said or implied he knew the charges were true years ago and [illegible] during all that. I think the transcript will show I [illegible] to see that [illegible] [illegible] I believe Martin [illegible]

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and them. However, when I left the NRC on 30 June I had not received them, or I do not know to what extent such documentation exists or how positive it is in stating Hartmann's charges are true.

During the summer of 1983 Vic Stello called me to ask what my reaction was to Martin's statement — & I believe I told him what I have written above.

Recently* I was sent copies of the October and November exchange on Hartmann. I have called Stello (yesterday) and he agrees that the above is both what I told him and what he intended to mean in his description of ~~what~~ his phone call with me. (I had not read his memo that way.)

* Came 11/16 — read partly on 11/17 — fully on 11/21 : Added 11/21

Memo to file   November 18, 1983

Subject: Hartmann matter

The following is my best recollection of the events concerning Hartmann's charges:

-I do not remember either the Hartmann name or the leak rate falsification coming up as an issue in either the Kemeny or the Rogovin reviews. (Apparently they did internally to the Rogovin review, as indicated by the staff memo from Ornstein) (name added after receiving Oct 17 Roberts letter to Markey, with attachments)11/21

-After Hartmann's public announcement, I&E (Stello) began to look into the charges.

-The NRC referred the charges to the Dept. of Justice. To do so, the Commission overrode Stello's arguments. I recall a Commission meeting* in which Stello argued against such a referral because I&E would have to stop looking into the matter and that would make it hard for them to conclude their review of the TMI accident. When told DOJ would move right ahead, Stello expressed skepticism--he believed DOJ would take a long time.

*At least it was in the big meeting room, 11/21

-DOJ asked for the NRC to provide a knowledgeable technical person to help them. We did--I didn't recall who it was--but then we found out (and should have realized in advance) that once that person began helping the DOJ before a grand jury, we could no longer talk to that NRC person about TMI.

-At some time in this period Stello came to the Commission to get subpoena authority because TMI operators who were on the list to testify to the grand jury had refused, under advice from their lawyers, to talk to the NRC.

So, in summary, my recollection is that

- The 1st I knew of Hartmann's charges were when he went public.

- I&E obviously took the charges seriously--else Stello wouldn't have argued not to give to DOJ.

- The Commission took them seriously--that is why we did give them to DOJ.

Now, when Tim Martin made his statements at the May Commission meeting:

- I was not surprised that someone on the staff believed the allegations. Typically, the judicial side of the NRC--which includes most of the Commissioners--keep an open mind on charges until the investigations have been completed. However the staff usually reaches a conclusion quickly--certainly some of the staff--hence I was not at all surprised that someone in the staff believed the allegations.

HOWEVER--I was totally surprised
(1) to find the person identified as being so closely involved--Tim Martin--not only believed it, but
(2) stated that Hartmann's charges were true--i.e., it was a fact.

Furthermore--and I don't have a meeting transcript--my impression now is that Martin said or implied he knew the charges were five years ago and had documented that. I think the transcript will show I asked to see those documents--because I was astonished. I believe Martin agreed to send them. However, when I left the NRC on 30 June I had not received them, so I do not know to what extent such documentation exists or how positive it is in stating Hartmann's charges are true.

During the summer of 1983 Vic Stello called me to ask what my reaction was to Martin's statements--I believe I told him what I have written above.

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*came 11/16--read partly on 11/17--fully on 11/21 :Added 11/21

Advisory Committee on Nuclear Facility Safety
to the
United States Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

September 15, 1989

Honorable Sam Nunn
Chairman, Senate Armed Services Committee
United States Senate
Washington, DC 20510

Dear Senator Nunn:

The nomination of Victor Stello to be the Assistant Secretary for Defense Programs (ASDP) at the Department of Energy (DOE) is before the Senate Armed Services Committee. I would like to offer some comments on the appropriateness of Mr. Stello's confirmation.

My comments are not in my capacity as Chairman of DOE's Advisory Committee for Nuclear Facility Safety (ACNFS), but as a concerned citizen with some experience in the areas for which Mr. Stello would have responsibility.

I worked with Mr. Stello for five years, from 1978-1983, while I was a Commissioner of the U.S. Nuclear Regulatory Commission (NRC). During 1979-1981, I was also chairman of the NRC and Mr. Stello reported directly to me. Therefore, I believe I have a good understanding of his strengths and weaknesses. Since March 1988, I have chaired the DOE ACNFS, which has given me personal knowledge of the many problems within the DOE defense facilities.

Mr. Stello is not a polished diplomat. He is impatient with incompetence and ignorance, with sloth and deception, and with ulterior motives. He also is impatient with repeated demands on his time when such are not directly related to the problems he is trying to solve. That is my description. His critics will charge he is insensitive to public concerns, arrogant to congressional staff, and short-tempered. To a large extent, the perception is in the eye of the beholder. I will comment that Mr. Stello has conducted public meetings which ran for many hours and his interaction with the public was sufficiently good that I received only letters of thanks -- none of criticism -- from the local public, even though they disagreed with the NRC's position.

Being able to interact well with the public is important. Having been in senior positions in the Federal Government for nearly 15 years, I know that interaction with the Congress is also important. But more important with respect to the Assistant Secretary for Defense Programs are two qualifications: knowledge and personal objective.

In five years at the NRC, I found no one who knew more about reactors than Vic Stello. There were individuals who had greater specialized knowledge in one area or another. However across the broad range of issues, design, maintenance, and accident analysis, no one had a better understanding and could apply knowledge more quickly and correctly than Vic Stello. Confirming him as ASDP would bring a degree of competence into the upper management seldom found in the federal government.

The second qualification is personal objective. I have read that Mr. Stello is charged with protecting the nuclear industry and minimizing safety problems. I find those charges impossible to believe. I can believe Mr. Stello's approach to handling problems is not what some critics would like. When finding a safety problem, Mr. Stello's approach was to fix it -- immediately -- rather than entering into a lengthy process following the elaborate NRC procedures. I argued and disagreed with Mr. Stello many times. However, never-- not even once -- did I doubt his commitment to safety. Mr. Stello is a dedicated public servant. His ways may not be everyone's ways, but his focus has always been on safety.

My experience with the DOE has convinced me that the defense programs need a tough, very knowledgeable, hard-driving leader who is uncompromising on safety. From five years of working with Vic Stello, I believe he is that type of person.

I find it ironic that his critics charge he will not push for safety and environmental protection. The defense facilities have been neglected for more than 20 years. What is needed is someone who is technically gifted and single-minded on safety. If the critics succeed in blocking Stello's nomination, they will, I believe, significantly decrease operational safety and environmental protection.

I suspect the question is whether the Congress wants someone who can deal effectively with the Congress or deal effectively with the problems.

Sincerely,

J F Ahearne

John F. Ahearne

16 November 1989

Senator Sam Nunn
Chairman
Senate Armed Services Committee
Washington, D.C. 20510

Dear Mr. Chairman:

I deeply regret being unable to testify before you today concerning the nomination of Victor Stello as Assistant Secretary of Energy for Defense Programs (ASDP). I only heard about the possibility of testifying last night. Since I now work in Connecticut, and was locked into a meeting in New York City this morning, it has turned out to be impossible to get to the hearing this afternoon.

I deeply regret this because I want to support the nomination as strongly as I can.

I have known Vic Stello for about 11 years. I first met him when I became an NRC Commissioner in 1978. I worked closely with Vic for the five years I was a Commissioner, particularly, during the time I was Chairman. I have kept in contact with him since then on an infrequent basis until quite recently, when he has become involved in DOE defense programs.

First impressions of Vic often are not positive. He is a forceful individual, who can be seen as narrow-minded and insensitive. He is both in some ways. He is narrow-minded in his total commitment to safety and he can be insensitive to the egos of those with whom he disagrees. I am not excusing his behavior, only explaining what I came to know.

Amidst the turmoil immediately following the first hours of TMI, VIc was the one person in the NRC and amongst its many advisors who was consistently correct in what was happening -- and this was not based on access to more information, only on a far better understanding of reactor systems. Over the years I was at the NRC, I came to realize that VIc had the most comprehensive knowledge of reactors, and what is necessary for their safe operation, than anyone at the agency, or anyone I met outside the agency.

As you may know, for the past year and a half, I have chaired an advisory committee for the Secretary of Energy. This committee, composed primarily of experts in reactor safety, and from outside the department, has looked at such operations as Savannah River, the Hanford Purex plant, WIPP, and Rocky Flats. We have just returned from visiting Pantex. Our reports have tended to be quite critical, because as we compare the stndards of the commercial nuclear industry to the DOE practices, we have found the latter seriously deficient.

When I heard that VIc Stello had been nominated as ASDP, I was delighted. At last, I thought, the defense programs would get exactly the type of person needed:

-- technically extremely knowledgable

-- uncompromising on safety

-- very demanding of pesonnel in that only competence and hard work are acceptable

-- unwilling to allow bureaucracy or lethagy to block his attack on problems.

I do not know whether Vic can solve the defene programs problems. I am absolutely convinced that without the characteristics which Vic possesses to a higher degree than anyone else I know, it is extremely unikety that the defense problems will be solved.

I find truly incredible any suggestion that Vic allows anything to interfer with safety. I can only conclude that anyone making such suggestions cannot really understand reactors and current operating practices. I had disagreements with Vic in the NRC -- usually these were over style of approach to problems. I suppose I could be accused of arguing that process had to be followed. Vic's concern -- always -- was to get the safety issues handled as soon as possible. I can not stress this point enough. Vic Stello is single-minded in pushing for safety.

If the DOE problems wre mild, then other characteristics might be important for the ASDP. Given the magnitude of the problems, you, Watkins, we all, need VIc.

Finally, let me remark on what appears to me to be a potential tragedy: an inablility to recognize dedicated public service.

I spent most of my professional life in the federal service: 11 years in the USAF, 6 years in DOD, 1 year in the White House, I year in the Energy Department, 5 years in the NRC, and one year in GAO. I have also dealt with many Congressional staff peole who have been on the Hill for long periods. What characterizes the professional in the agencies and on the Hill is a sense of dedication for the public good. Working in the federal service as a career employee is very satisfying-- if you take satisfaction from accomplishing something for the public welfare, take enjoyment from being a sevarnt of the people in our democratic system.

People like Vic Stello are really the heart of our federal system. They do not make a lot of maoney. They do not have second homes, a new car every few years, and extensive new wardrobes for their spouses. They do not take European or Caribbean vacations, and when their children go off to college, the already tight budget gets tighter. I know because I lived that life, which Vic is living. The rewards are solely from knowing that you are doing a hard job, doing it well, and that the job is important to be done well, important to society. The intangible benefits keep people like Vic in the government. We all are much better off because people like Vic stay in federal service.

But justice should them allow them to progress to positions which they deserve and can accomplish. I believe Secretary Watkins could get no person better than Vic Stello for ASDP even if Congress were to authorize any pay level for the position.

The defence facilities are in bad shape, particularly in attitudes and practices. Vic will not tolerate those. I urge you to vote for his confirmation.

Sincerely,

J F Ahearne

John F. Ahearne

Mr. **Hendrie**. I do not remember, Senator. I can practically guarantee you that the few papers I have brought along from the Commission are not going to be very informative, but I will go scan through it and see what there is there.

[Information referred to follows:]

bnl
aui

BROOKHAVEN NATIONAL LABORATORY
ASSOCIATED UNIVERSITIES, INC.
Upton, Long Island, New York 11973

Department of Nuclear Energy

(516) 282-
FTS 666- 2443

December 26, 1989

Honorable Sam Nunn, Chairman
Senate Armed Services Committee
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

At the Committee hearing on December 19, 1989 on the nomination of Victor Stello to the office of Assistant Secretary of Energy for Defense Programs, Senator Exon asked if I would check my files and furnish for the record the date when, as a member of the Nuclear Regulatory Commission, I was informed of the allegations of Mr. Hartman by the NRC staff.

I have checked the few records I retain from my service on the Commission and find no record as to when I was informed of this matter.

Sincerely,

Joseph M. Hendrie

JMH/nn

TELEX: 6852516 BNL DOE FACSIMILE: (516)282-3000, FTS 666-3000 CABLE: BROOKLAB UPTONNY

Mr. **Bradford**. I will check, Senator. I do not recall offhand. I am also not 100 percent sure that I first learned of the Hartman allegations from the staff. I recall something about a radio talk show in Pennsylvania on which he may have spoken, and that it may have been called to our attention by someone outside the Commission in the first instance, but I will have to check.

[Information referred to follows:]

935T

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION
ALBANY 12223

PETER A. BRADFORD
CHAIRMAN

THREE EMPIRE STATE PLAZA
(518) 474-2530

January 11, 1990

Senator Sam Nunn
United States Senate
303 Dirksen Building
Washington, D.C. 20510

Dear Senator Nunn:

At the Senate Armed Services Committee hearing on the nomination of Victor Stello on December 19th, I was asked to review my files for any material that would shed light on the sequence of events during 1979-80 by which the commissioners of the Nuclear Regulatory Commission became aware of the statements by Harold Hartman regarding the falsification of the primary system water loss rate at Three Mile Island Unit 2.

Because Commissioner Gilinsky and I expressed concern about other aspects of the TMI accident investigation early in 1980, I am inclined to think that I became aware of the Hartman allegations between March and May 1980. I must, of course, have known of the allegations when they were referred to the Justice Department in May, 1980. Had I known of them before March, I would almost certainly have mentioned them in the other memoranda and letters regarding accident investigation shortcomings that I sent in early 1980.

Mr. Hartman's first statement to the NRC's Special Inquiry Group (the group charged with investigating Three Mile Island) was in May, 1979. A memorandum (attaching Hartman's May 1979 statement) that I sent to the NRC's general counsel in December, 1980 (with copies to the Commissioners and to Mr. Stello) makes clear that I was disappointed in the failure of the Special Inquiry Group to have followed up on the allegations. I can find nothing that pinpoints when or from whom I first learned of them.

Senator Sam Nunn
Page Two
January 11, 1990

As I testified to the Armed Services Committee on December 19th, I have a vague memory that the Hartman allegations were originally called to my attention not by the NRC staff but by an individual outside of the NRC. I also have a vague recollection that these allegations came to public attention as a result of a radio or television talk show interview with Mr. Hartman in Pennsylvania. I have enclosed a 1983 letter from me to Mr. Stello on this subject.

The allegations were clearly serious and should have been pursued when they were first made. After the NRC referred the allegations to the Justice Department in May, 1980, I saw no need for NRC involvement as long as the FBI investigation continued. That investigation did continue until after I left the Commission in March, 1982.

I'm sorry not to be more precise in reconstructing the chain of events. However, I have checked my files quite thoroughly, so any further information would have to come from NRC files or the recollections of others. If the matter is of sufficient importance, I would be glad to review any material compiled by the Committee staff to see if it brings back further recollection on my part.

Sincerely,

Peter Bradford

Peter Bradford

P.S. As I indicated to Ms. Goodman, the account of the Hartman matter in the book Safety Second by the Union of Concerned Scientists (pp.131ff) seems to jibe with my own more limited recollection.

ka/189-15

cc: Sen. John W. Warner
Sen. Timothy E. Wirth
Victor Stello

STATE OF MAINE
PUBLIC UTILITIES COMMISSION
242 State Street
State House Station 18
Augusta, Maine 04333
(207) 289-3831

November 10, 1983

Victor Stello
Deputy Executive Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear ~~Mr Stello~~ Victor:

Since I continue to receive inquiries regarding the description of my state of knowledge of the Hartman allegations that is contained in your June 15 memorandum to the files, I think I should set forth the one qualification that I mentioned to you when we talked in mid-October.

Specifically, your description of my state of knowledge is accurate as far as it goes. However, I did indicate that my awareness of the seriousness of the Hartman allegations came in substantial part from Henry Myers, who mentioned the allegations repeatedly to me around the time that they became public.

I am quite confident that I did not know of Tim Martin's views. As one who is currently the chairman of a regulatory agency, I am flabbergasted that the then-Chairman of the NRC would not have shared such knowledge with his fellow Commissioners if, indeed, your memorandum's point # 2 is correct.

Sincerely,

Peter A. Bradford

PAB/mm

CC: Nunzio J. Palladino, Chairman,
U.S. Nuclear Regulatory Commission
Representative Morris K. Udall,
Chairman, Committee on Interior and Insular Affairs,
U.S. House of Representatives
Representative Edward Markey, Chairman,
Subcommittee on Oversight and Investigations,
Committee on Interior and Insular Affairs,
U.S. House of Representatives

ATTACHMENT 2

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

JUN 15 1983

MEMORANDUM FOR: Files

FROM: Victor Stello, Jr.
Deputy Executive Director
Regional Operations and Generic Requirements

SUBJECT: HARTMAN ALLEGATIONS

In preparing responses to the memo from Commissioner Gilinsky dated May 31, 1983, regarding the Hartman Allegations, I communicated with three of the Commissioners who were in office at the time of our investigation into the Hartman Allegation beginning in March of 1980.

The purpose of the telephone conversations was to attempt to gain an understanding of the general impression each of the Commissioners had regarding the Hartman Allegations.

These impressions are reported below:

1. Commissioner Bradford could not recall specific conversations on the subject but was aware that they were discussed and had the general impression that the Hartman allegations were serious and might have grave consequences.

2. Commissioner Ahearne recalled specific conversations between myself and he, who at that time was Chairman. He indicated that he was not surprised that Tim Martin held a view that he stated in a Commission meeting on May 24, 1983, and did have recollection of conversations on this subject.

3. Commissioner Hendrie did not have specific recollection of conversations but he did have general recollection that he was fully informed at that time and offered to provide a letter to the Commission if needed. I indicated that if that would be necessary I would communicate with him later.

4. Commissioner Kennedy was unavailable since he was out of the country and was not expected to return until June 20, 1983.

The remaining Commissioner at that time was Commissioner Gilinsky, and since the response was being prepared for Commissioner Gilinsky, no attempt was made to get his recollection.

Victor Stello, Jr.
Deputy Executive Director
Regional Operations and Generic Requirements

Senator **Exon**. Whatever you have on that, we would like to have it for the record. The last question I have I would like to ask just the former members of the Nuclear Regulatory Commission. That would be Dr. Ahearne, Mr. Asselstine, Mr. Bradford, Mr. Doub, and Mr. Hendrie. Based upon your personal knowledge, please describe any circumstances in which Mr. Stello acted in a manner contrary to NRC policy.

Now, so that we will not get into too long a discussion, I recognize that some of the actions that Mr. Stello took as the chief executive operating officer may not have been cleared by the Commission. And my question is, specifically, based upon your personal knowledge, can you describe any circumstances in which Mr. Stello acted in a manner contrary to NRC policy, which would be a majority of the Commission?

Dr. **Ahearne**. No, I cannot.

Senator **Exon**. Mr. Asselstine.

Mr. **Asselstine**. Mr. Chairman, I guess the only instance I can think of may be Mr. Stello's views on the Commission's responsibilities and authority to investigate criminal wrongdoing. And that is something where I think that there is an exchange of correspondence and responses to questions to Senator Glenn, where Mr. Stello expresses his views. I do not think that that was endorsed by a majority of the Commission. But I would have to check to make sure. But that is the only instance I can think of where—I think that the Commission's responsibilities and obligations under the Atomic Energy Act are pretty clear. And I did think at the time, and I still believe, that Mr. Stello's interpretation of those responsibilities was incorrect and overly narrow.

Senator **Exon**. Mr. Bradford.

Mr. **Bradford**. Senator, I cannot give you an unequivocal answer to that question. Commission policy certainly has never encompassed the threatening of the inspectorate. It has never encompassed the using of the investigative powers of the agency for ends of a personal vendetta sort. It has never encompassed the sidetracking of Justice Department investigations. But as I indicated in my prepared testimony, those allegations stem from events after my time on the Commission. And I am afraid that I cannot tell you that they occurred, but I also cannot turn a blind eye to them and say that, no, there is nothing here. I am afraid it is for you to determine whether or not they occurred; if they occurred, they cannot be reconciled with Commission policy.

Senator **Exon**. Mr. Doub.

Mr. **Doub**. Senator, for the years that I was a commissioner of the Atomic Energy Commission and worked with Vic Stello, to the best of my recollection, the answer is no. Now, that is not a flip answer; it is a very sincere answer. I can think of others who did take such actions, as Vic did not.

Senator **Exon**. Mr. Hendrie.

Mr. **Hendrie**. I cannot think of any, Senator.

Senator **Exon**. Thank you, I have no further questions of this panel. Do you, Senator Warner?

Senator **Warner**. No.

Senator **Exon**. Do you, Senator Wirth?

Senator **Wirth**. I do, Mr. Chairman.

Senator EXON. I recognize Senator Wirth.

Senator WIRTH. Thank you, Mr. Chairman. Mr Asselstine, let me just see if I can summarize what the issue is surrounding the TVA. Then I want to jump briefly to Zimmer and to the fire regulations issue, so we could see if we can understand it from the perspective of all of you, who were much closer to this then we.

On the TVA there were construction problems, the "Third World construction" issue. You spot that, you come back to the Commission. You get the Commission to write a letter to Admiral White saying, do you comply. Now, he has a relatively short period of time to answer that letter. We have described earlier, it is sort of a damned if you do, damned if you don't kind of a situation that he is in. It is a very tough situation. And so he calls the people who in fact drafted the letter to him. He calls and talks to Mr. Stello and to Mr. Denton to ask them how he should reply to the letter. He replies in the letter there is no problem, everything is okay, essentially. Is that correct?

Mr. ASSELSTINE. The only exception I would make, Senator, is I do not have detailed knowledge of what Mr. Denton or Mr. Stello said to him or the substance of that conversation. My recollection is there was some dispute about what was discussed.

Senator WIRTH. We have testimony that they both gave under oath on that front.

Mr. ASSELSTINE. That is correct.

Senator WIRTH. He then writes back everything is okay.

Mr. ASSELSTINE. That is correct.

Senator WIRTH. It is subsequently proved that the letter is wrong.

Mr. ASSELSTINE. That is correct.

Senator WIRTH. Now, the reason we are exploring this is, what does that tell us about Mr. Stello? And that says, one, what kind of judgment is there for the regulator to be telling the regulatee how to write the letter? You know, shades of the S&L business or whatever. Where does the regulator and those being regulated, where is that line drawn? And this goes to the coziness issue we were talking about before. But maybe a little bit more severely than that.

And, two, the answer to this is flat wrong, as it was proven later. I cannot speak to the advice that was given. But both men have said yes, they did talk to Admiral White. Certainly Mr. Denton does. And I think that Mr. Stello was refreshed of that. Mr. Denton clearly remembers listening to Mr. Stello talk to Admiral White. There does not seem to be any question that that occurred in the van and then at Mr. Stello's home that night. So, it just raises questions, one, of judgment, and two, just simply accuracy or correctness.

Mr. ASSELSTINE. That is correct, Senator. I think that is a fair summary.

Senator WIRTH. Let me ask you when were the Zimmer problems? Who was on the Commission at that time?

Mr. ASSELSTINE. John Ahearne, I—well, I guess they got started when Peter was there. [Laughter.]

Senator WIRTH. So you have Peter in a barrel on this one.

Mr. ASSELSTINE. It may have gotten started when Joe was there.

Senator **Wirth**. We have heard earlier today that Mr. Stello described the Zimmer problems as paper problems. Do you all remember enough about the Zimmer problems to know if they were more than paper problems, or were just paper problems? Was this "Third World construction," too?

Dr. **Ahearne**. As I recall part of that issue, and I think the comment these are paper problems, has for years been a debate within the regulatory framework; are record-keeping violations the same kind of seriousness as omission of action, commission of actions, hardware failures. And there has been a tendency—there was a tendency, again, on the technical staff to view violations of keeping a proper record as being less significant and not representative of a problem unless it was shown that the faulty record was linked to a faulty process. And I think it was in that context.

In the early stages I recall of Zimmer, there was a sense on many in the technical staff that this is just overblown. And I think part of it was because some of the allegations were being made by an individual who as I recollect was someone who was—there were a lot of questions about how truthful he was and whether his allegations were correct.

Senator **Wirth**. I think we heard today from Mr. McCarten, Dr. Ahearne, I do not mean to——

Dr. **Ahearne**. No, I understand the point. All I am trying to say is, as I recall as the agency dug further, it got to be a lot more than just paper problems in the sense that they were—you could demonstrate that welds were done incorrectly; you could demonstrate that a weld that was claimed to have been repaired really was not repaired. And as I recall, there were also instances of credentials of individuals who were supposed to be qualified welders, that those credentials were not really valid.

So, it gradually was a can of worms, began to get worse and worse and worse, which eventually led to the company giving up on Zimmer. Because as I recall, when Bechtel came in, they said, the situation is so bad that you would have to do so much reconstruction to demonstrate and to fix up this plant that it just was not worth it. That is sort of as I recall.

Mr. **Asselstine**. Senator Wirth, I would just add a couple of thoughts on that. First, I can tell you from firsthand experiences, absolutely no question, they were more than paperwork problems. There were some serious hardware problems out there. I learned that when I went out to see Zimmer; it was one of the first plants that I went to see. And we went through the company tour of the plant, and I got that same argument, that well, there may be a few paperwork questions, we may not be able to provide all the documentation, but the plant is basically built right.

And then, over lunch, the NRC resident inspector, who was young and aggressive and eager, said, well, we can do one of two things. You can either sit down and eat lunch or we can go back out in the plant on our own, and I will show you some things that you ought to see. And I said, let's go back and see what is out there.

He showed me a number of things where it was not paperwork; it was clear that these were hardware questions and also questions involving whether there was deliberate falsification of information.

He showed me one piece of pipe, where we had to climb up on a ladder, where a piece of pipe had been installed and the pipe had numbers identifying the pipe, to make sure that you put the right kind of pipe in the right place. And the numbers had been ground off. This is good evidence that, in fact, they knew perfectly well what they were doing. They had a piece of pipe that they had installed that was not qualified, did not fit the job where it was supposed to be. Instead of taking it out and correcting the problem somebody had deliberately come in and ground off the identification numbers.

That is a hardware problem; that is not a documentation or paperwork problem. It is also a falsification and a wrong-doing problem, the kind of problem that I think you have to be sensitive to, whether it is in the commercial side or in the defense program side.

The resident inspector showed me valves that clearly had not been properly cared for and maintained, where there was debris and corrosion inside the valves so that when you started the plant up, this material would be flushed into the system, become contaminated, and create a problem for worker exposure over the operating life of the plant.

The resident inspector showed me a wall where large steel plates had to be welded in place and then the licensee was supposed to do radiographs of the welds to make sure that they had been done properly, and the radiographs were not there.

The company was arguing, that is just a paperwork problem; there is no safety significance. And the resident pointed out to me that there was important safety equipment, pumps and valves, attached to that wall. And if you could not be sure that the wall was solid and that those plates would stay in place, you could not be sure that safety equipment would stay there under stresses and strains and carry out its safety functions.

Those are a few examples of the things he showed me. He showed me about 10 or 12 of those things over the course of about 45 minutes or an hour. That was a clear indication to me that there were fundamental hardware problems there, and that this argument that we were only dealing with paperwork problems was invalid and that the Commission needed to do something.

In fact, a majority of the Commission, a bare majority of the Commission, voted to stop construction at Zimmer because we concluded, particularly on the basis of the advice of the regional administrator in that case, that the situation was just out of control and the company did not have any control of what was going on. The corrective work that was being done was not being done properly, and we just needed to stop and get things sorted out. And there was a justification to immediately shut down construction and get these things fixed.

As Commissioner John Ahearne points out, eventually the company decided that the cost of correcting those problems at that late date in the construction process was simply too high and they abandoned the plant. It is now actually being converted to a coal-fired plant.

Senator WIRTH. Did Mr. Stello change his mind about this not being paper problems but being significant quality, design, false statement problems?

Mr. ASSELSTINE. I honestly do not recall. I would have to check to see if my records showed that. I certainly would have hoped so, but I just cannot recall.

Senator WIRTH. This becomes a problem as we look at the nuclear weapons complex. In my backyard, at Rocky Flats, Building 371 is a building that Dr. Ahearne is familiar with, that started out as a $150 million project. It has escalated to being more than a half a billion dollar project. It is now operating, I think, at about 10 or 12 percent capacity. We had discussions of—not that much you are saying, Dr. Ahearne? Not even that much.

Well, the problems that we have there—this all came out at the time of the famous coffeepot in the C5A; do you remember the multi-million dollar coffeepot that did not work? Well, we have in our own backyard in Denver this enormous multi-million dollar, hundreds of millions of dollars, coffeepot that does not work. And the reason it does not work is exactly the same kind of thing. "Third World construction" problems which the DOE never told anybody about.

The reason that they surfaced is the same sort of thing that happened. A lot of the employees came to me and said this is truly amiss. We have significant problems here, and it is very important long term.

Now what do we ask—this Assistant Secretary has a responsibility for precisely this kind of issue and turning it around. What sort of a record is there?

Dr. AHEARNE. Okay, Senator, you are now on ground that I do know well—that is the Rocky Flats plant. The problem at Rocky Flats plant are multiple.

Senator WIRTH. That is true.

Dr. AHEARNE. One of the problems is that those people do not understand what safe operation is. They have been allowed to operate for years in a casual attitude, and the practices, the operating practices are bad; there has been almost no attention to trying to upgrade equipment. 371 is a new building. It was designed poorly. That is a whole host of other problems. It was a poor design, not just the construction, it was a poor design.

Senator WIRTH. Well, that is a paper problem. A design problem is just a paper problem, is it not?

Dr. AHEARNE. No, the technical competence and the people who were actually doing the design were bad.

The whole operation there—the current phrase is safety culture, and one of the—I think, Jim Asselstine mentioned, that is one of the qualifications to be able to build that in.

What Rocky Flats needs is a drastic turning around, not just resources, but attitudinal turning around. And all I can say is what I saw in a number of plants, after Mr. Stello would go in, those kinds of changes were made.

I think that there is a great problem with trying to make sure that you get someone who is perfect in every way. Vic is not perfect in every way. Absolutely not. But what he is, is extraordinarily competent on pushing for safety. And that is what Rocky Flats needs.

Senator WIRTH. Any other comments on Zimmer? I appreciate that, Dr. Ahearne, and I appreciate the work that you have done in Colorado on Rocky Flats. You have an enormously thankless task, as well. Now, Mr. Bradford, anything on Zimmer?

Mr. Chairman, I am sorry to take so much time but I think it is very important that we get a full record here and I would not want the committee to be acccused of not having a full record.

Senator EXON. Senator Wirth, please get the full record in. I would hope that maybe we could make some of this a part of the record. And we do have one more witness, and I think that is going to take a considerable length of time, as you know full well. About how long do you think?

Senator WIRTH. Whatever Mr. Bradford has to say, and then I would like to hear from Mr. Asselstine and then whoever else about the fire regulations issue, which we have only heard allusions to today and not had a discussion of, and I think it is important to get that out. Mr. Bradford.

Mr. BRADFORD. Senator, just that the dichotomy between paper problems and hardware problems itself seems to me to be a false one. If I am stopped for driving without a license, I have a paper problem. But society has a legitimate interest in being sure that drivers in fact are licensed, because if they are not, there soon enough will be real hardware problems as well.

Senator WIRTH. Mr. Asselstine, maybe you could—you were the person that brought up the fire regulations issue this afternoon, right?

Mr. ASSELSTINE. That is correct, Senator.

Senator WIRTH. Could you describe to us what the fire regulations issue was and why it is important?

Mr. ASSELSTINE. Yes. Actually, much of the work, I think, that was done on that issue was done by the two colleagues on either side of me (Peter Bradford and John Ahearne), but I can at least give an overview of my perception of it, starting as someone outside the agency and then coming into it, and they can add in on that.

There was a very significant operating event at the Brown's Ferry plant in 1985, as I recall—1975.

Senator WIRTH. Right. Brown's Ferry is where?

Mr. ASSELSTINE. It is in Alabama and it is a TVA plant, one of those currently troubled plants.

There was a fire and the fire essentially defeated for a period of some time the automatic safety systems in the plant. And I think it generated concern on the part of the NRC staff, and also on the part of the commissioners, about the adequacy of the approach that had been taken to designing these plants to withstand the effects of fire.

For a substantial period of time, as I recall, the approach was to be able to control and stop a fire if a fire were to occur. And it became evident that that approach simply was not going to do the job and as a result, the NRC staff, with really major direction, I think, from the Commission itself, put together a set of much more aggressive fire protection regulations that imposed a series of requirements and a fundamentally different approach.

For the first time, the NRC, in the late 1970s and early 1980s—I think the regulations actually took effect in early 1981—the NRC said, it is not good enough just to be able to fight a fire and to stop a fire. Now what you have to be able to do is show us that you will have enough safety equipment in the plants still operable, so that if you have a fire at any location, you still can get the plant safely shut down and you can keep it shut down so that the fire does not contribute to or cause an accident.

And that was a fundamental difference, and it required a major review and in fact substantial modifications of a large number of plants because plants simply were not designed that way.

In many instances you had cables—the plants are typically set up with redundant safety systems so that you have a primary system and a backup system, so that if anything goes wrong, if you have a failure associated with one, you still have another system available to you. But in many instances, the cables for the two systems might go through the same room. So that if you had a fire in that room you knocked out both systems or had the potential to do that, or even knocked out more than two—multiple safety systems in the plant.

A number of utilities did not like this regulation because first, it required a very difficult and complex analysis, and second, it cost a great deal of money to modify the plants. You had to do a thorough review and then you had to rewire the plant; in some instances you had to put up walls, and fire doors and barriers and things of that kind, suppression systems as well.

So a group of utilities sued the NRC and challenged the regulation. They argued that the regulation was arbitrary and that it was not supported by the record material that had been developed in the rulemaking. The NRC won in court and the court said, we think there is a sufficient basis for this regulation and what is more, the NRC has discretion on a case-by-case basis to grant exemptions if the utility can show they have a legitimate justification for why they should not be required to meet a particular aspect of the rule.

The NRC staff then issued the detailed explanatory materials that said to the companies, here is how you have to go about complying with these regulations. And in fact, they started going out and doing inspections of plants, and they started holding workshops around the country to explain this guidance, to make sure that the utilities knew what was expected of them and would then move aggressively to comply with the regulation.

The group of utilities that was involved in the lawsuit still did not like the regulation, and they were not very happy about the U.S. Court of Appeals saying that they now had to comply with it. So they scheduled a meeting with a senior NRC staff person, and it turned out they scheduled a subsequent meeting with Mr. Stello. And they went to the senior staff person and they said, we do not like this regulation; we have some changes we want made in the interpretation of the regulation, and those changes, in some instances, went to key elements of the regulation that they had unsuccessfully challenged in court. And they said, if you are not willing to agree to these changes, we have a meeting scheduled with Vic Stello in just a few minutes, and let us go over and talk to him about it.

So, the group marched over to Vic's office. They sat down, and the industry people said, we do not like this interpretation of the regulations; we want it changed. These are the things we want done. And Mr. Stello said, can you people do this—to the couple of people who were there, the managers. And they said yes, we can do it. And he said, do it. Rewrite the interpretation.

The key people that were involved in all of this were the fire protection engineers and the inspectors. They are the people that know what you need to have to do to protect against fires. They knew the details of the regulation; they knew what they were going to have to do to make sure that the utilities complied with that regulation. They were cut out of this process; they were not asked their opinion. They were not allowed to provide their input. They had already issued their interpretations and those interpretations had gone through the formal NRC staff review process and had been approved of and signed off on in accordance with the Commission's procedures. And they were simply cut out of the process, and all of a sudden now they had to deal with a new interpretation.

A number of those individuals—I think it was six, filed what are called "differing professional opinions." That is where an NRC staff person says, "I have a fundamental problem with this decision that has been made. I think it is wrong, I think it is unfair, and I object to it."

It is a very extraordinary and very unusual step. It is typically something that does not do your career any real good within the NRC. It requires that the senior NRC staff do a fairly thorough and detailed review of your objections and make a formal, written decision. It is a very difficult, formal, and cumbersome process.

These people, who were the experts, felt so strongly that these changes to the interpretations of the regulation went against the original regulation and what was necessary to ensure that the utilities did what needed to be done that they filed those objections.

My own view is, the whole approach was just fundamentally wrong. The experts on the NRC staff should have been asked for their views. This is something that should have been done in a formal way, and I did not like the idea of rewarding utilities that had continually fought the whole regulation, had dragged their feet, were not complying with the requirements, and then rewarding those people by giving them a new interpretation that basically allowed them to do what they wanted to do all along. I think it is something that did hinder the ability of the fire protection engineers and the inspectors to do their jobs, and I think it was poor judgment to follow this kind of an approach.

Senator WIRTH. Any other comments on the fire protection regulation? Gentlemen, I thank you very much. We appreciate your being here. This is a tough time of year and you have been very generous with your time and your thoughts and your commitment, and I want to thank you on behalf of all of us. Mr. Chairman, thank you very much.

Senator EXON. Senator Wirth, thank you very much, and gentlemen, let me just say that we appreciate your patience. It has been a long afternoon and it has been a very, very interesting one and we will be forever grateful for your excellent testimony.

The last witness we have is Mr. Stello. Mr. Stello, would you come forward at this time? Mr. Stello, we welcome you here and appreciate the fact that you have had a long afternoon, as we all have. You have been extremely patient. You are the most patient bully that I have ever known in my life, and I am glad to see you here. By the way, are you a bully? I keep hearing that. [Laughter.]

STATEMENT OF VICTOR STELLO, JR., ASSISTANT SECRETARY OF ENERGY FOR DEFENSE PROGRAMS-DESIGNATE

Mr. STELLO. I am a lovable teddy bear. [Laughter.]

Senator EXON. If you were a bully, I was going to offer you a 1-day contract with the University of Nebraska football team when we play Colorado next year. [Laughter.]

But since you are a teddy bear, would you consider putting a black and white striped uniform on and being a referee? We were not too happy with the refereeing of that football game we played in Colorado, so please take this into consideration if this does not work out—just to add a little levity to the situation.

I know this has been very trying for you and we appreciate your steadfastness and we appreciate the fact that you have been here every time we have asked you to come and you have been very forthcoming. I think it would be best at this time for us to just let you proceed in any way you see fit in answering any of the allegations, the concerns that have been expressed here today, and then we will undoubtedly have some questions after you have concluded your presentation.

Mr. STELLO. Thank you, Mr. Chairman. I think there are a few things that it would be useful to discuss and I think I ought to start with what seems to be a pressing issue of what happened at Three Mile Island; what were the facts? The easiest response to that is, I would urge the Senators to please read the FBI investigation of that matter. They went into these very issues to resolve whether or not there was in fact a question of how the agency handled it.

Now, I am going to rely upon a memory of some 10 years ago about what really happened with respect to these allegations regarding the leak rate. Let me set the stage about setting forth what the issue is.

The NRC license requires, and each licensee has this requirement, that he conduct his facility in such a manner that the leak rate from the primary cooling system does not exceed a certain limit, and it sets forth a limit of what is called "identified and unidentified leakage." The purpose of those leak rates are to ensure that the primary system integrity remains intact. Of course, the fact that it is leaking—the purpose is to ensure that the primary system integrity is maintained.

By definition, if there is leakage it means that somehow it is violated. It may be leaking from a pipe or a seal or a fitting, but leakage nevertheless, so there are two numbers, an unidentified and identified leak rate number. These numbers we consider to be very important, so important we set forth the requirements for them in the license. We tell each licensee he must operate his plant within these limits.

Now, with respect to what Mr. Hartman alleged, is that when the licensee was taking the measurement to demonstrate compliance with these numbers, since just having the number in the license is of no value unless you have a method by which you can measure and demonstrate you are complying with that limit, he alleged that there were improprieties in the way in which the leak rate measurements were being conducted in the plant. I believe the first allegations were brought forth in an interview in May 1979, and those were under the inspectors who were assigned separate from my responsibilities at TMI. As Harold Denton said, I was there with him.

Separate inspectors were up there doing those interviews. They were part of Inspection and Enforcement. I was not in Inspection and Enforcement at that time. Those results were passed on to another group called the Rogovin Group, the Special Inquiry Group, to study the accident. That investigation was commissioned by the Nuclear Regulatory Commission itself. There were many other oversight groups.

That additional group, also contacted and discussed these leak rates with Mr. Hartman, but it never found its way in that report, either. So there were two separate discussions of the Hartman allegations, one in what you referred to as NUREG 0600 and the other with respect to the Rogovin group. In neither case was that information passed on, nor was I aware of it personally myself, nor was the Commission aware of it.

I believe I first learned about it from an individual by the name of Ira Rosen, who was on some TV show someplace, and I do not remember where, who informed me, and when I learned of it we sent some of our technical people along with some of the Office of the Inspector and ordered those people to go and do an investigation, or interview the individual and collect that information to find out if indeed those allegations were true.

What we found when we got into the plant is indeed, there were specific data that we were able to actually get our hands on which demonstrated that the leak rates were being manipulated. The easiest way to understand it is, since you are trying to calculate a leak rate, you need to know how much water was added to the primary system over time. In calculating the leak rate, well they could just judge, if you will, the logs, with how much water they added to the system to make the leak rate come out to what they wanted it to come out to. Those were input data into a computer program which later we found that the computer program itself was not valid, so that the leak rates that were being calculated, when they were being calculated at all, were not done in a way that was accurate.

When we collected this information, it became apparent that there was criminal wrongdoing and the Justice Department was brought into it, as you heard from Mr. Greenspun. The conversation that Mr. Greenspun referred to took place—I was there for sure, and Mr. Greenspun. I know there were some others there. I think Mr. Case was there, an attorney, Mr. Cinto I believe was there, Mr. Murray, and probably Norm Moseley and maybe Tim Martin from our regional office. There were a number of people there.

What the debate centered about in that discussion was, exactly what did the license requirement mean? That is, did we have a license requirement which required all records to be preserved? Some of the records and some of the leak rates that were being calculated showed a negative leak rate.

Now, in my mind I do not see any value whatsoever in a leak rate which shows that a primary cooling system operating in excess of 2,000 pounds is sucking in water. It just cannot do that. You cannot have a negative leak rate. It is physically impossible. I had a hard time believing that our license requirement was such that anyone would reasonably interpret records which you know to be absolutely invalid as ones that had to be preserved. Those were the kinds of debates and the arguments over to what extent, what records were needed.

There needed to be records in the plant to demonstrate that the leak rate was being complied with in the time interval set forth in the license. Those records were clearly required. What they were throwing away were leak rates not only of the type I described, but other leak rates which gave them a leak rate that was unacceptable, and they were getting leak rates all over the map.

Some of those records that they threw away they should not have, but there are others that they threw away that in my view it was okay to throw them away. That was the basic debate which Mr. Greenspun referred to that suggested that I lied to him, and I deeply resent the suggestion that I lied.

I faithfully explained and had two attorneys there who were responsible for the interpretation of our regulations to explain what our regulations do or do not mean, and our license requirements.

The issue of whether or not the Commission was informed and whether or not any of that was covered up, I cannot read and have never read an FBI report which makes it plainer that there is absolutely no basis that anyone, in my judgment, anyone in the NRC acted improperly, and I think that is spelled out with the conclusions as they are stated in the FBI report which specifically investigated this particular matter. I do not know of any other way to resolve that issue but just simply to urge that each of the Senators takes the time to read the report, because I think it dispels rather adequately the notion that there was anything improper about the issues related to TMI.

Senator Wirth. Mr. Stello, while you are right there, did the FBI report talk about nothing improper, or did they say that there was no basis for criminal indictment, or criminal activity? Do they use the words "improper," or was it—just fill us in for the record.

Mr. Stello. I will have to ask you to read it. I do not know if I am permitted to read it, but my reading of it, since it is in front of me and perhaps I can read at least a few words.

Senator Exon. Just a minute. Now, I do now believe—we have decided earlier that the FBI report is something that is not for the public record at this time, so I would rule that that would be out of order for anybody to seek that further. It is available to anyone on the committee, and it may be available for public release at some later time. I would suggest that we not pursue that further at this time.

Senator WIRTH. If we might, Mr. Chairman, if I might make a suggestion, the issue as to exactly what was or was not said by the FBI in the investigation of what happened seems to me is important. You know, what exactly was said? This happened 10 years ago. Mr. Stello is on the line for this. This is an important—an extremely important—Federal appointment, and it seems to me between now and the time that we are considering the nomination, it might be useful to figure out how to make public exactly what was said, because it does not seem to me it is fair to Mr. Stello, on the one hand, to have allegations made by some people who say this, and other people say that. We ought to have out exactly what it does say.

Senator EXON. Well, I might agree with you, but this is neither the time nor the place to discuss that. If the Senator wishes, after we finish this open hearing, if there is a motion to go into executive session, which is permissible under the rules of the Armed Services Committee, I would take that under consideration. I do not think we are trying to cover up anything. It is just that FBI reports are something that we wrestle with all the time, and certainly this would not be a place to make public that which we know cannot be made public until it is cleared by the FBI.

Senator WIRTH. I am not suggesting we do that here, Mr. Chairman. I am only suggesting that between now, December 19, and the time that this debate goes back public again when we come back, it seems to be there is a period of time to see if this can, so we can get this information out publicly. That is only fair to Mr. Stello.

Senator EXON. I would agree that that is correct. I do remember, though, on a somewhat controversial nomination that was before the body last year by one John Tower, the FBI report never, ever was made public and we could not get it made public. The only person that could have done that would have been the President of the United States in that instance, and for reasons that the President felt were important, he did not. So I agree with you, Senator Wirth. It would be nice to have that. We will try, but let us not depend on it.

Mr. STELLO. Let me respond by not reading words, but rather characterizations. Your questions was, does it deal only with criminal issues and responding to the allegations. In my view, the answer to that question is no.

Senator EXON. Fine. We are going to try to get all that out, Mr. Stello, for the record.

Mr. STELLO. It is obviously more troubling to me than it is to you because it is my reputation that is being impugned when there is a document which would very clearly clear it up. It has come up at three hearings, and the Senators all have the report and if you have read the report and you still have that view, then I would have a different concern. But the report is there to read, and it is clear. It is just not narrowly construed to criminal issues.

Now, there were some other issues. I believe it would be worth at least mentioning. The Zimmer issue. The first thing, with the committee's permission, the issue of the transcript of the interview of James McCarten who testified, there were comments made about that by the Commission as part of the Commission's request to do so by Mr. Keppler, who responded to the issues raised by Mr. McCarten. With the chairman's permission, the response to the issues that he raised are provided in this document, and if the Chair would permit me, I would like to have that submitted for the record.

Senator EXON. Without objection, we will accept that for the record.

[The information referred to follows:]

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION III
799 ROOSEVELT ROAD
GLEN ELLYN, ILLINOIS 60137

September 21, 1983

MEMORANDUM FOR: Chairman Palladino
Commissioner Gilinsky
Commissioner Roberts
Commissioner Asselstine
Commissioner Bernthal

FROM: James G. Keppler, Regional Administrator, Region III

SUBJECT: COMMENTS ON THE TRANSCRIPT OF INTERVIEW OF JAMES B. MCCARTEN CONDUCTED BY ADMINISTRATIVE JUDGE HELEN F. HOYT AND C. SEBASTIAN ALOOT, ESQ.; ZIMMER INVESTIGATION 81-13

The July 12 Report to the Chairman on Allegations of Thomas Applegate Concerning Conduct of the Office of Inspector and Auditor by Helen F. Hoyt and C. Sebastian Aloot contains as Exhibit H, the transcript of an interview with James B. McCarten, a former Region III Investigator. As stated in my memorandum to you of September 7, 1983, regarding the Hoyt/Aloot report, we believe many of Mr. McCarten's statements are irresponsible, and that we have conducted our evaluations and investigations openly and responsibly. We further stated that we would provide the Commission with our written rebuttal of Mr. McCarten's interview by September 23, 1983. This is that rebuttal.

At the request of John F. Streeter, who was Acting Director, Investigation and Enforcement Staff, Region III at the time of Zimmer Investigation 81-13, this rebuttal does not cover Mr. McCarten's accusations solely related to him. Mr. Streeter prefers to correspond with you personally regarding this matter; however, Region III believes Mr. McCarten's criticism is without merit.

We have not addressed separately each of the scores of allegations and implications contained in Mr. McCarten's statement. Rather, we have addressed in the enclosure to this memorandum the most significant issues alleged or implied. We believe that these issues cover the allegations directed at Region III.

The review performed by certain members of my staff and me in addressing these four issues has reconfirmed in our minds that Region III Investigation 81-13 was performed competently and fairly, with appropriate regard to health and safety and potential criminal considerations, and consistent with Commission investigatory practice at that time. We would be pleased to meet with you to discuss this matter if you conclude that it merits further consideration.

James G Keppler
James G. Keppler
Regional Administrator

Enclosure: As stated

cc w/enclosure:
W. J. Dircks, EDO

REGION III COMMENTS ON THE TRANSCRIPT OF INTERVIEW OF JAMES B. MC CARTEN, EXHIBIT H OF REPORT TO THE CHAIRMAN ON ALLEGATIONS OF THOMAS APPLEGATE CONCERNING CONDUCT OF THE OFFICE OF INSPECTOR AND AUDITOR

IT IS ALLEGED THAT REGION III DELIBERATELY INTENDED TO PERFORM AN INVESTIGATION IN A MANNER WHICH WOULD HIDE THE FACT THAT ITS PAST INSPECTIONS AND INVESTIGATIONS FAILED TO IDENTIFY SIGNIFICANT PROBLEMS AT ZIMMER (INTERVIEW AT 133, 136, 149, 155).

This allegation is clearly false for the reasons given below.

In my January 12, 1981 memorandum to Victor Stello, Jr. (Exhibit 1), I made the following recommendation:

> "Because Region III's handling of the earlier investigation is the focal point of the requested investigation by MSPB and these new allegations are intertwined with the previous investigation, we recommend that pursuit of these allegations be performed independently by another Region."

Although Mr. Stello decided not to accept this recommendation and instructed me to conduct this investigation, the fact the recommendation was made should clearly demonstrate there was no intent to conduct a poor investigation or hide the fact that Region III's past inspections and investigations failed to identify significant problems at Zimmer.

An October 30, 1981 memorandum from me to Region III Division Directors (Exhibit 2) describes a program to evaluate the implementation of the reactor construction inspection program at Zimmer. The attachment to that memorandum is an October 27, 1981 memorandum from James H. Sniezek to E. B. Blackwood establishing the program and its methodology. As stated in the October 30 memorandum, this program was requested by me. I believed it was important to determine the root causes for the failure of the construction inspection program to identify quality assurance and hardware problems at Zimmer. I believed this was important since it could have implications at other facilities under construction in Region III as well as facilities in other Regions. Subsequent to the establishment of this evaluation program, Region III was informed by Mr. Sniezek that the program was being cancelled. Mr. Sniezek believed that the reasons for the inspection program not identifying the problems at Zimmer were sufficiently understood and that further manpower expenditure would not increase this understanding sufficiently to justify the expenditure. In spite of this cancellation, my request for this evaluation program clearly indicates there was no intent by Region III to hide the fact that past inspections and investigations failed to identify significant problems at Zimmer.

It was alleged by Mr. McCarten (Interview at 148) that "Streeter was brought into Zimmer by Keppler the minute he knew he had a big problem." We read this to mean this assignment was made in an effort to assure the investigation was performed in a manner which would hide the fact that past inspections and investigations failed to identify significant problems at Zimmer.

In my January 22, 1981 memorandum to the Region III Staff (Exhibit 3), Mr. Streeter is shown as the Acting Director, Enforcement and Investigation Staff. Although this announcement (on January 22, 1981) postdates the January 5, 1981 Government Accountability Project's request to the Merit Systems Protection Board, discussions with Mr. Streeter about the proposed reassignment and decisions leading to his assignment took place prior to January 5. This reassignment was a part of a major reorganization of IE and the Regions which had been planned for some time. Thus, it is not correct that Mr. Streeter was reassigned to the position of Acting Director, Enforcement and Investigation Staff to keep any kind of a "lid" on the Zimmer investigation. In addition, Mr. Robert F. Warnick was assigned as the Zimmer Investigation Team Leader in February or March 1981. Although Mr. Streeter retained responsibility for the quality of Mr. McCarten's investigation, Mr. Warnick coordinated and was knowledgeable of all aspects of the Zimmer effort. As such, Mr. Warnick would have been aware of any attempts by Mr. Streeter to perform an improper investigation. Mr. Warnick does not believe an improper investigation occurred.

My April 29, 1981 memorandum to James H. Sniezek (Exhibit 4) recommends an ASLB notification regarding the quality assurance problems identified during the ongoing Zimmer investigation. A review of this proposed notification clearly shows there was no intent to hide the problems being found in the investigation or to conduct the investigation in a manner which would hide the fact that Region III's past inspections and investigations failed to identify significant problems at Zimmer.

IT IS IMPLIED THAT RIII EMPLOYEES DELIBERATELY IMPROPERLY EDITED INVESTIGATION REPORT 81-13 SUCH THAT:

1. CONTRADICTIONS EXISTED BETWEEN THE REPORT BODY AND THE EXHIBITS (INTERVIEW AT 76).

2. THE REPORT SUMMARY AND BODY CONTAINED FALSE STATEMENTS (INTERVIEW AT 76, 79, 102, 103).

3. THE REPORT WAS TONED-DOWN, WATERED-DOWN, STERILIZED. EMPHASIS WAS REMOVED SUCH THAT PROBLEMS WERE MINIMIZED (INTERVIEW AT 76, 136).

4. SUBSTANTIVE FACTS WERE REMOVED (INTERVIEW AT 136).

5. CHANGES WERE MADE TO THE REPORT AFTER IT WAS SIGNED (INTERVIEW AT 84).

6. THE REPORT DID NOT REFLECT INFORMATION IN THE FILES WHICH SHOWED HARDWARE PROBLEMS (INTERVIEW AT 99).

7. THE REPORT WAS SIGNED (BY MCCARTEN) UNDER VERBAL PROTEST (INTERVIEW AT 77).

Neither the Hoyt/Aloot report nor the McCarten interview transcript provided us with sufficient specific information such that we could review the bases for the above comments. Even though these specifics are lacking, a response to these implications is provided below.

We are not aware of any substantive information in our files which was omitted from or contradicts statements made in Report 81-13 or the draft report submitted to the Commission for review prior to release of the final report. It should be noted that, due to comments made by the Commission, Mr. McCarten, and others, changes were made to the report prior to issuance. As indicated in the report, some issues were yet to be investigated and therefore were not included. Information which we had developed at that time reflecting hardware problems is detailed in the report, and was discussed with the Commission and the public. It is true that at that time, based on our inspection/investigation and a limited program of independent measurements, we believed the majority of problems were largely programmatic in nature.

We are unaware of any false statements made to the Commission or to the public or in Report 81-13, and believe this allegation to be without basis. During the editing process, reviews were conducted to assure that the body of the report was consistent with the exhibits. The final review was performed with Mr. McCarten's involvement.

Significant editing was performed during the production of Report 81-13, especially the sections authored by Mr. McCarten. Some of this editing was necessary to assure objectivity, correct errors, correct grammatical usage, improve readability, and revise to an acceptable format. RIII took precautions to assure that any modifications to the report were reviewed by each author. Mr. McCarten had the opportunity to review the report at various stages, including prior to issuance.

During a meeting held at Headquarters on October 27, 1981 Mr. McCarten stated he felt that the latest draft of the report was deficient in that the "tone" of some interview summaries had been changed. The "tone" of an interview, as referred to by Mr. McCarten, pertained to comments made by interviewees such as "this plant is all screwed up," (as noted by McCarten on interview page 75). Such comments had been deleted from interview summaries as irrelevant to a summary. Of course, such comments in the written statements attached to the report were not deleted.

Following Mr. McCarten's comment, he was requested to again review the report and propose any changes he felt were necessary to assure the report was accurate. Mr. McCarten and his supervisor then agreed on the changes to be incorporated.

The OIA interview of William Schwiers, former Cincinnati Gas and Electric Quality Assurance and Standards Manager, was received in RIII from OIA via facsimile, and was the only OIA interview received in time for inclusion in Report 81-13. When the complete package of OIA interviews was received on November 20, 1981, the RIII Deputy Director directed that an immediate review of the package be conducted to determine if it contained any information which contradicted the findings in Report 81-13, which was ready for issuance. This review did not identify any contradictions, and the remaining interviews were not included in Report 81-13, but were to be considered during the ongoing investigation.

Investigation Report 81-13 was routed and signed by participating personnel well before issuance, in order to give office and site personnel an opportunity for review. Although Mr. McCarten did make comments on the style and format of the report, he stated that the sections with which he was involved were factually correct, and he signed the report without coercion. Mr. Streeter documented the report signature/review sequence by memo of November 23, 1981 (Exhibit 5). All substantive changes made to the report after it was signed were discussed with the inspectors or investigators to assure that they concurred.

IT IS ALLEGED THAT I OVERRULED MY INSPECTORS' RECOMMENDATIONS TO SHUT DOWN THE ZIMMER PROJECT BECAUSE IT WOULD BRING ATTENTION TO THE POOR PERFORMANCE OF REGION III IN PERMITTING SIGNIFICANT PROBLEMS AT ZIMMER TO HAVE GONE UNRECOGNIZED. IT IS ALSO ALLEGED THAT I FEARED THAT IF THE PROJECT WERE SHUT DOWN IT WOULD NEVER BE RESTARTED AND THAT A SHUTDOWN WOULD MAKE APPLEGATE LOOK LIKE A HERO (INTERVIEW AT 52-55).

Near the end of March 1981, most of the RIII inspectors and investigators involved in the Zimmer investigation believed the construction work at the site should be stopped. Their concerns were discussed with the licensee on March 26, 1981 (See Investigation Report No. 50-358/81-13, Pages 155-157), and with Regional Management on March 27 and 30, 1981. My decision as stated in Report 81-13 was as follows: "Following the March 26, 1981 exit meeting, consideration was given to the need to suspend construction activities based on the investigation findings. However, in recognition of the nature of the problems (largely programmatic) and the fact that ongoing work would not compromise the ability to accurately determine the quality of completed work, it was decided at that time that stopping construction work was not required. Rather, attention was placed on establishing controls to assure the quality of ongoing and future work." (See Investigation Report No. 50-358/81-13, Page 158.) At no point in time did Region III give consideration to allowing work to continue at Zimmer because work stoppage might have brought attention to the Region's failure to identify these problems at an earlier date.

During the meetings with Regional management on March 27 and 30, 1981 some discussion did center on the difficulty of resuming construction following the loss of knowledgeable personnel and trained craftsmen that would be associated with the stoppage of construction activities. While it was recognized that this could have significant impact on the project, it was not a factor in the determination of the NRC's recommended course of action. Neither was the recognition of Applegate receiving credit for the NRC's actions a consideration in the NRC reaching its decision.

The shutdown of a construction site is a significant action with far-reaching effects, an action not taken unless clearly warranted. In 1979 RIII brought about the shutdown of the Marble Hill site because of our concern that concrete placements could cover plant defects. At the time of my March 1981 decision not to close Zimmer, the identified problems were largely programmatic or document-related in nature, and I felt a shutdown was not appropriate or justifiable. As the majority of site work had been completed, my concern was that any remaining work be well controlled and that defects not be covered or made inaccessable.

To control ongoing and future work at Zimmer, RIII outlined ten specific actions to correct the QA deficiencies that had been identified at that point in time. These actions were the subject of an Immediate Action Letter dated April 8, 1981 (Exhibit 6) and included: 1) increasing the size and technical expertise of the CG&E QA staff; 2) increasing independence between Kaiser construction and Kaiser QA/QC; 3) conducting 100% reinspections of QA inspections conducted by Kaiser and other contractors; 4) reviewing QC inspection procedures (Note: construction activities controlled by these procedures were stopped until after the reviews were completed); 5) retraining of QA/QC personnel; 6) reviewing procedures governing deviations from Codes and FSAR statements; 7) reviewing procedures governing nonconformance reporting; 8) changing QA/QC records control; 9) reviewing nonconformance reports, and 10) reviewing the CG&E audit program. These actions and decisions were provided to Mr. Borgmann by Mr. Warnick and me on March 31, 1981. (See Investigation Report No. 50-358/81-13, Pages 158-159.)

IT IS ALLEGED THAT RIII DID NOT PURSUE THE POTENTIAL CRIMINAL ASPECTS OF THE INVESTIGATION AND WITHHELD INFORMATION FROM THE DEPARTMENT OF JUSTICE.

Throughout his interview, Mr. McCarten expressed his disagreement with the RIII investigation approach. He asserted that RIII did not share his view that the criminal aspects of the investigation should be pursued vigorously and with the highest priority. It is true that RIII and Mr. McCarten had different views as to how far RIII should pursue criminal matters. As we stated in our September 7, 1983 response to the Hoyt/Aloot report, we intentionally did not pursue allegations once we had determined that there was potential criminality involved and that there were no immediate health and safety concerns. We were following IE policy (See Tr. of Commission meeting of October 28, 1981, page 21; 10 CFR Section 1.64) and our approach to the investigation in that respect was no different than past investigations. RIII also believed that it was following explicit instructions from OIA not to interview high-level CG&E corporate officials (required to develop a case for possible criminal referral), although Mr. Cummings disputed that such instructions had been given. (See Tr. of Commission meeting of October 27, 1981, pages 116-117; Tr. of Commission meeting of October 28, 1981, pages 14-15, 19, and memo, Keppler to Stello, dated October 28, 1981). As evidenced by the civil penalty proposed in November 1981, which included violations for false quality assurance documents and for harassment and intimidation of quality control personnel, RIII did pursue the leads of its investigation up to the point necessary to establish violations of NRC regulations.

While it was not IE policy, and therefore not RIII practice, to pursue allegations beyond the point of determining that the health and safety matter of concern to the NRC had been or would be resolved, we were and continue to be, alert to potential criminal violations. Policy had been established to assure that potential criminal violations were brought to the attention of OIA for possible referral to DOJ. Again, that policy was followed as evidenced by the numerous contacts by RIII and OIA with DOJ to assure DOJ was fully aware of potential criminal violations. It was our understanding that OIA would perform any NRC investigation of the potential criminal aspects it deemed necessary before referral to DOJ. In that regard, we maintained a close working relationship with OIA to assure they were aware of our findings. As indicated by Mr. McCarten, he was in frequent contact with his OIA counterparts. (Interview at 30, 59, 61, 131, 151.)

The attached chronology (Exhibit 7) demonstrates that early and continuing efforts were taken by RIII to actively involve DOJ and to periodically brief DOJ on the status of the investigation. We believe that we clearly identified the areas involving potential criminal aspects to DOJ in a timely and responsible manner and did not withhold any relevant information from DOJ.

EXHIBITS

1. Memorandum, James G. Keppler to Victor Stello, Jr. January 12, 1981 entitled: Zimmer - Government Accountability Project Request for Investigation By Merit Systems Protection Board Concerning NRC's Handling of Applegate Allegations.

2. Memorandum , James G. Keppler to C. E. Norelius, R. L. Spessard, and R. F. Warnick, October 30, 1981 entitled: Zimmer - Reactor Construction Inspection Program Evaluation.

3. Memorandum, James G. Keppler to Region III Staff, January 22, 1981 entitled: Proposed Region III Reorganization.

4. Memorandum, James G. Keppler to James H. Sniezek, April 29, 1981, entitled: Recommendation For Notification of Licensing Board - William H. Zimmer Nuclear Power Plant.

5. Memorandum, John F. Streeter to James G. Keppler, November 23, 1981 entitled: Investigation/Inspector Signatures on Final Zimmer Investigation Report 50-358/81-13.

6. Immediate Action Letter dated April 8, 1981.

7. Chronology of RIII/OIA/DOJ Interfaces.

Mr. Keppler

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION III
799 ROOSEVELT ROAD
GLEN ELLYN, ILLINOIS 60137

EXHIBIT 1
Page 1 of 2

January 12, 1981

MEMORANDUM FOR: Victor Stello, Jr., Director, Office of Inspection and Enforcement

FROM: James G. Keppler, Director

SUBJECT: ZIMMER - GOVERNMENT ACCOUNTABILITY PROJECT
REQUEST FOR INVESTIGATION BY MERIT SYSTEMS PROTECTION
BOARD CONCERNING NRC'S HANDLING OF APPLEGATE ALLEGATIONS

In followup to our earlier telephone conversation, Region III has reviewed the subject package to determine a recommended course of action for NRC. As we see it, three major issues need to be addressed. These involve: 1) the adequacy of Region III's earlier investigation into allegations provided by Mr. Applegate; 2) the significance of what appear to be new allegations contained in the package; and 3) the need for further inspection efforts in light of the gross lack of control alleged. Our recommendations with respect to these issues are as follows:

1. Adequacy of Region III's Earlier Investigation

   OIA will be conducting an investigation, at the direction of Chairman Ahearne, into Region's handling of the original Applegate allegations. We concur with this approach and will cooperate fully with the OIA investigation (scheduled to commence January 13, 1981).

2. Significance of Apparent New Allegations

   Region III has reviewed the 19 allegations contained in the package submitted by the Government Accountability Project. A summary of this review is provided as an enclosure. Overall, we believe we know the bases of some of the allegations, whereas others appear to be new allegations. In any event, the lack of specificity of the charges will require additional contact with Mr. Applegate to determine whether further NRC investigative efforts are warranted. Because Region III's handling of the earlier investigation is the focal point of the requested investigation by MSPB and these new allegations are intertwined with the previous investigation, we recommend that pursuit of these allegations be performed independently by another Region.

EXHIBIT 1
Page 2 of 2

3. Need for Further Inspection Efforts

It is Region III's assessment that the construction inspection program at Zimmer has been comparable to the inspection program at other Region III construction sites and, while a fairly high noncompliance history has resulted and a number of quality assurance problems have been identified, we believe the quality of actual construction is basically sound -- with the exception of pipe support systems (a matter being pursued by Region III).

Notwithstanding, in consideration of the shabby image portrayed by the Government Accountability Project's package, the number of allegations raised during the project, and the relatively large number of quality related issues identified by our inspection program, we believe confidence would be enhanced by conducting a team inspection which would focus on evaluating the completed construction work. In this regard, we would suggest establishing a team headed up by a Region other than Region III. The Region responsible for the inspection should have access to inspectors from the remaining Regions, as needed. The team inspection should utilize an approach similar to that being developed under the direction of the Division of Program Development and Appraisal. If you approve of this approach, the timing of this inspection needs your input concerning priorities. Presently, we do not have sufficient manpower to do two team inspections simultaneously, and we are scheduled to commence a team quality assurance inspection at Clinton in early February. Mr. Taylor would prefer to have the Clinton inspection performed as scheduled with the Zimmer inspection conducted afterwards (late March or April). Since Zimmer is essentially complete, the timing of that inspection is not critical from a status of construction aspect. Furthermore, should the new investigation disclose significant problems, the Clinton inspection could be interrupted and the team inspection started at Zimmer. However, my reaction is that we should proceed with the Zimmer Team Inspection as a priority because of the visibility being given to this matter.

We will be ready to discuss our recommendations further with you at your convenience.

James G. Keppler
James G. Keppler
Director

Enclosure:
As stated

cc w/encl:
R. C. DeYoung, IE
J. H. Sniezek, IE
N. C. Moseley, IE
[illegible]

EXHIBIT 2
Page 1 of 5

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION III
799 ROOSEVELT ROAD
GLEN ELLYN, ILLINOIS 60137

October 30, 1981

MEMORANDUM FOR: **C. E. Norelius, Director, Division of Engineering & Technical Inspection**
R. L. Spessard, Director, Division of Resident & Project Inspection
R. F. Warnick, Director, Division of Enforcement
[illegible]

FROM: James G. Keppler, Director

SUBJECT: ZIMMER - REACTOR CONSTRUCTION INSPECTION PROGRAM EVALUATION

The attached memorandum from Mr. Sniezek to Mr. Blackwood concerns an evaluation of the implementation of the reactor construction inspection program at Zimmer. This evaluation is being conducted at my request.

Please take steps to assure full cooperation by involved Region III personnel in making this evaluation as meaningful as possible --- we want to learn everything we can from this experience to preclude similar problems in the future.

[illegible] James G. Keppler
James G. Keppler
Director

Attachment: Memo dated 10/27/81

cc w/o attachment:
J. H. Sniezek, IE
A. B. Davis, RIII

BEST AVAILABLE COPY

EXHIBIT 2
Page 2 of 5

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

PRINCIPAL STAFF			
[illegible]		[illegible]	
/D		PAO	
/D		SLO	
[illegible]			
[illegible]			

OCT 2 7 1981

MEMORANDUM FOR: E. B. Blackwood, Chief, Reactor Projects Section (RI & III),
RPRIB, DRRRI, IE

FROM: James H. Sniezek, Director, Division of Resident and
Regional Reactor Inspection, IE

SUBJECT: REACTOR CONSTRUCTION INSPECTION PROGRAM EVALUATION

You are designated to lead a team comprised of G. C. Gower, PDA, R. E. Shewmaker, PDA, and yourself for the purpose of evaluating the Reactor Construction Inspection Program and its implementation at the W. H. Zimmer Nuclear Power Station. The scope of this evaluation is enclosed.

Organizationally, you will report directly to me while conducting this evaluation. [illegible] relieved of duties as Chief, Reactor Projects Section (RI & III) so as to enable you to devote full-time effort to this project. I have been assured by N. C. Moseley, Director, DPDA, that Messrs. Gower and Shewmaker are available for full-time participation in the project, during which they will report to you.

I expect you to issue a draft report on or about December 1, 1981 and the final report by December 15, 1981.

J. H. Sniezek

James H. Sniezek, Director
Division of Resident and Regional
Reactor Inspection
Office of Inspection and Enforcement

Enclosure:
As stated

cc w/enclosure:
J. G. Keppler, RIII
N. C. Moseley, IE
G. C. Gower, IE
R. E. Shewmaker, IE

OCT 20 1981

EXHIBIT 2
Page 3 of 5

REACTOR CONSTRUCTION INSPECTION PROGRAM EVALUATION

A. Objective

Determine the extent to which content and implementation of NRC inspection and enforcement programs may have affected or contributed to the accumulation of problems found during the IE investigation at the W. H. Zimmer Nuclear Power Station. Proposed [illegible]

B. Background

The IE investigation (Report No. 50-358/81-13) of activities associated with the W. H. Zimmer Nuclear Power Station revealed several problems related to effectiveness of quality assurance programs. In the interest of learning from this experience, it is important to examine both content and implementation of the IE Reactor Inspection Program that was applied at Zimmer.

Several issues regarding effectiveness of [illegible] Program have arisen as a result of the investigation. Examples would include the effect of very close scrutiny at Zimmer on the number of findings relative to lower levels of effort at other construction sites, the extent to which the inspection program as written could or did identify the deficiencies revealed by the investigation, and possible improvements in the inspection program that could facilitate identifying earlier those symptoms of quality assurance breakdown within the expenditure of limited resources normally allocated to construction inspection.

EXHIBIT 2
Page 4 of 5

This evaluation will constitute a [illegible] enforcement history at Zimmer during construction. The activities described in the work plan below represent an initial estimate of the scope of this evaluation.

C. Work Plan

1. Review Zimmer Investigation Report and associated correspondence to identify specific problems that reasonably could have been detected and corrected through implementation of the construction [illegible]

2. Review the construction inspection program that was in effect over the Zimmer construction period.

3. Review the Quality Assurance Program for construction at Zimmer.

4. Review inspection reports, related correspondence and 766 file data that address construction at Zimmer.

5. Review construction deficiency reports and other reports from CG&E associated with construction at Zimmer.

6. Review the historical Outstanding Items File for Zimmer.

EXHIBIT 2
Page 5 of 5

7. Discuss apparent anomallies and questions developed during the review of documentation with appropriate Region III management and inspectors.

8. Summarize findings and develop recommendations as appropriate.

9. Produce program evaluation report

    Issue draft report

    Discuss with Region III and IE:HQ Management

    Issue final report

EXHIBIT 3
Page 1 of 3

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION III
799 ROOSEVELT ROAD
GLEN ELLYN, ILLINOIS 60137

January 22, 1981

MEMORANDUM FOR: Region III Staff

FROM: James G. Keppler, Director

SUBJECT: PROPOSED REGION III REORGANIZATION

Effective February 15, 1981, Region III is proposing to reorganize. Enclosure I shows the reorganization down to and including the branch level. By January 31, 1981, we will send you the complete reorganization showing all personnel assignments.

The positions shown in Enclosure II to this memorandum will be filled by competitive selections under the Vacancy Announcement System. Until the positions are filled, the individuals assigned to them will serve in an acting capacity. At that time these acting [illegible] the other positions shown for them unless they are selected for the positions in which they have been acting.

Certain positions will be filled by reassignment. It is not necessary to competitively fill positions when the position is at the assigned person's grade level.

If bargaining unit members have any concerns related to the impact that this proposal may have, such concerns may be relayed to management by contacting the NTEU representative (Chapter Officer or Steward), no later than five (5) work days prior to proposed implementation. In addition, however, employees are encouraged to discuss with their supervisors any matter related to this proposal.

James G. Keppler
James G. Keppler
Director

Enclosures:
1. RIII Organization Chart
2. Listing of Vacant Positions

USNRC REGION 1 RGANIZATION

ENCLOSURE

Effective February 15, 1981

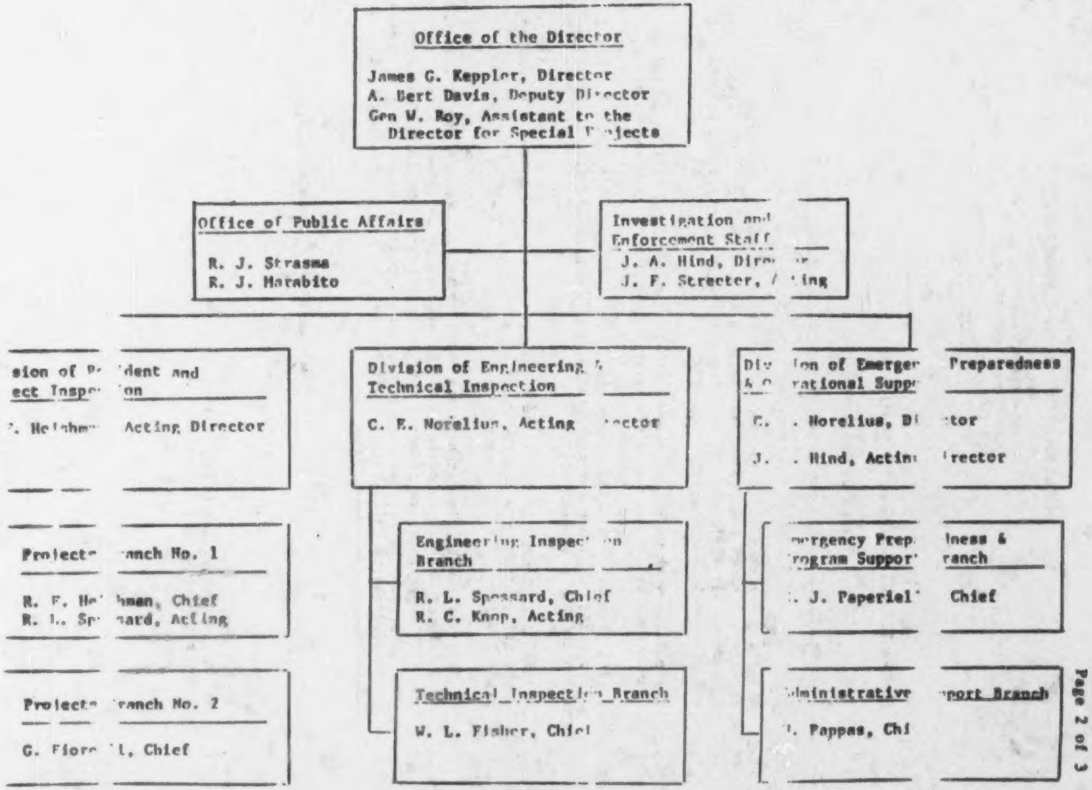
Office of the Director
James G. Keppler, Director
A. Bert Davis, Deputy Director
Gen W. Roy, Assistant to the Director for Special Projects
Office of Public Affairs
R. J. Strasma
R. J. Marabito
Investigation and Enforcement Staff
J. A. Hind, Dire
J. F. Streeter, ting
sion of P dent and ect Insp on
. Heishm Acting Director
Projects anch No. 1
R. F. Heishman, Chief
R. L. Sp ard, Acting
Projects ranch No. 2
G. Fiore l, Chief
Division of Engineering & Technical Inspection
C. E. Norelius, Acting ector
Engineering Inspection Branch
R. L. Spessard, Chief
R. C. Knop, Acting
Technical Inspection Branch
W. L. Fisher, Chief
Div ion of Emerger Preparedness & rational Supp
C. . Norelius, Di tor
J. . Hind, Actin rector
ergency Prep ness & rogram Suppor ranch
. J. Paperiel Chief
dministrative port Branch
. Pappas, Chi

EXHIBIT 3
Page 2 of 3

EXHIBIT 3
Page 3 of 3

ENCLOSURE II

POSITIONS TO BE FILLED BY COMPETITIVE SELECTIONS

Director, Division of Resident and Project Inspection

Director, Division of Engineering and Technical Inspection

Chief, Independent Measurements and Environmental Protection Section

Chief, Operational Support Section

Chief, Facility Radiation Protection Section

Chief, Safeguards Section

Chief, Emergency Preparedness Section

Enforcement Coordinator

Chief, Test Program Section

Chief, Reactor Projects Section

J G Keppler

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION III
799 ROOSEVELT ROAD
GLEN ELLYN, ILLINOIS 60137

EXHIBIT 4
Page 1 of 2

April 29, 1981

MEMORANDUM FOR: James H. Sniezek, Director, Division of Resident and Regional Reactor Inspection

FROM: James G. Keppler, Director, Region III

SUBJECT: RECOMMENDATION FOR NOTIFICATION OF LICENSING BOARD - WILLIAM H. ZIMMER NUCLEAR POWER PLANT (AITS F03017961)

The purpose of this memorandum is to recommend in accordance with MC 1530 that the Licensing Board for the William H. Zimmer Nuclear Power Plant be notified of an ongoing Region III investigation. The investigation began on January 12, 1981, and resulted from allegations received from an ex-Zimmer site worker on November 18, 1980, and from allegations received from Thomas Applegate through the Merit Systems Protection Board in a letter dated January 5, 1981. Investigation of these allegations has resulted in additional allegations and information from present and former Zimmer site workers.

Ten NRC inspectors/investigators have interviewed over 90 individuals and have spent over 1200 man-hours of field work. Investigation efforts to date have identified quality problems associated with structural beam welds, material traceability, conformance with welding code provisions, and several other quality control problems. These problems are described in Enclosure 1. To provide assurance that problems similar to those identified by the NRC investigators do not recur during future construction activities, the Licensee has committed to an extensive corrective action program. These commitments were documented in an Immediate Action Letter (copy enclosed as Enclosure 2) dated April 8, 1981.

Based on the investigation findings thus far, additional actions to confirm the quality of past construction work are warranted. To that end, an enforcement meeting was held with the licensee in the Region III office on April 10, 1981, in which the licensee described a program being developed to establish an acceptable level of confidence in the quality of past construction work. This program is expected to be finalized by the licensee and approved by Region III by June 1, 1981. A copy of that program will be provided to you for transmittal to the Licensing Board as soon as it has been finalized and accepted by Region III.

The investigation is expected to continue for at least another six weeks to two months. Although many of the findings thus far are [illegible] important, and potentially relevant to the Zimmer Licensing Board proceedings, we do not yet know (1) if the findings put a new or different light upon an issue before the Licensing Board or raise a new issue,

EXHIBIT 4
Page 2 of 2

(2) if the findings affect current staff positions, or (3) if the findings [illegible] minations upon completion of the investigation and will provide those to you for transmittal to the Licensing Board.

Requested completion date for this Action Item is May 27, 1981.

James G. Keppler
Director

Enclosure: IAL dtd 4/8/81 to
CG&E fm RIII

cc w/enclosure:
J. Lieberman, Deputy Director
Rulemaking & Enforcement
Division
M. Meadows, AITS Cord., IE

91 [illegible]

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION III
799 ROOSEVELT ROAD
GLEN ELLYN, ILLINOIS 60137

EXHIBIT 5
Page 1 of 1

November 23, 1981

MEMORANDUM FOR: James G. Keppler, Regional Administrator

FROM: J. F. Streeter, Chief, Reactor Projects Branch 2, DRPI

SUBJECT: INVESTIGATOR/INSPECTOR SIGNATURES ON FINAL ZIMMER INVESTIGATION REPORT 50-358/81-13

As a result of comments received from the Commission, ELD, IE:HQ (EIS), RIII management, and participating investigators/inspectors, the final draft report which was the document the investigators/inspectors reviewed prior to signing the report cover page was revised. In those cases where I viewed the changes as substantive or potentially substantive, the involved investigator/inspector was contacted to assure they were in agreement with the changes. As of this date I am confident that the [illegible] management. In view of this, I elected not to delay the issuance of the report to obtain new signatures on the cover page.

J. F. Streeter, Chief
Reactor Projects Branch 2, DRPI

IMMEDIATE ACTION LETTER

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION III
799 ROOSEVELT ROAD
GLEN ELLYN, ILLINOIS 60137

EXHIBIT 6
Page 1 of 3

file
7.... mur

April 8, 1981

Docket No. 50-358

Cincinnati Gas and Electric
  Company
ATTN: Mr. Earl A. Borgmann
[illegible]
[illegible]
[illegible]
139 East 4th Street
Cincinnati, OH 45201

Gentlemen:

This refers to concerns identified during the ongoing investigation at the Zimmer site which [illegible] discussed with you and members of your staff on [illegible] which [illegible] discussed with you on March 31, 1981, in the Region III office. The investigation began on January 12, 1981, and is expected to continue for several more weeks. The results of the investigation will be documented in two or more investigation reports.

The NRC's concerns relating to ongoing construction related activities are the subject of this Immediate Action Letter. This letter documents the following corrective measures which we understand you have initiated or plan to take concerning the problems identified by the NRC:

1. Concerning QA Staffing

   CG&E will increase the size and technical expertise of the CG&E QA organization by adding individuals qualified in the areas of radiography and nondestructive testing, piping supports and hangers, welding, structural design and fabrication, electrical design and construction, and metallurgy. We understand CG&E will utilize temporary personnel qualified in these areas until permanent staff members have been hired.

2. Concerning Independence and Separation Between Kaiser Construction and Kaiser QA/QC

   CG&E will take action by April 15, 1981, to assure independence and separation of the QA/QC function performed by Kaiser from the con- [illegible]

3. Concerning QC Inspections

   Using the personnel described in item 1 above, CG&E will conduct 100% reinspections of QC inspections conducted by Kaiser and other con-

EXHIBIT 6
Page 2 of 3

revised CG&E audit program as described in item 10, below, is implemented by these qualified individuals and RIII releases this requirement.

4. Concerning QC Inspection Procedures

All QC inspection procedures will be reviewed [illegible] [illegible] reviews will be conducted by personnel independent of the construction organization to confirm that the procedures include appropriate inspection requirements and applicable hold points. The construction activities controlled by these QC inspection procedures will not be performed after the date of this letter until the applicable procedure has been reviewed and approved.

5. Concerning Training

QA/QC personnel at the Zimmer site will receive training on any new procedures and practices resulting from actions taken to fulfill provisions of this letter prior to implementation of the procedures. In addition, refresher training will be given prior to June 1, 1981, on (a) the identification and [illegible] of nonconformances, deficiencies, and problems, (b) the procedure for resolving nonconformances, deficiencies, and problems, (c) the feedback mechanism for informing the identifying individual of the resolution of the nonconformance, deficiency, or problem, and (d) the avenue of appeal should the identifying individual disagree with the adequacy of the resolution.

6. Concerning Deviations from Codes and FSAR Statements

Prior to May 1, 1981, the procedures governing the identification, reporting, and resolution of deviations from Codes and FSAR statements will be reviewed for adequacy and revised as appropriate. The procedures will require CG&E to review and approve the resolution of any such deviations.

7. Concerning the Voiding of Nonconformance Reports

The procedures governing nonconformance reporting will be reviewed for adequacy. The review will be accomplished not later than April 10, 1981. The disposition of each nonconformance report together with appropriate justification will be documented.

8. Concerning QA/QC Records

The review and alteration of existing QA and QC records has been stopped. These records will be controlled by CG&E until a program defining records

EXHIBIT 6
Page 3 of 3

control, usage, and adequacy has been prepared by CG&E and agreed to by RIII.

9. Concerning Conditions Adverse to Quality

CG&E will perform a 100% review of all surveillances and nonconformance [illegible] This program will be continued until RIII releases this requirement.

10. Concerning the Audit Program

The existing CG&E audit program will be reviewed and revised by [illegible], 1981, to include technical audits of construction work and more comprehensive and effective programmatic audits.

Please inform [illegible] understanding of the [illegible] is different from that stated above.

Sincerely,

James G. Keppler
James G. Keppler
Director

cc:
Mr. J. R. Schott, Plant Superintendent
Central Files
Reproduction Unit NRC 20b
AEOD
Resident Inspector, RIII
PDR
Local PDR
NSIC
TIC
Harold W. Kohn, Power Siting Commission
Citizens Against a Radioactive Environment

EXHIBIT 7
Page 1 of 2

CHRONOLOGY OF RIII/OIA/DOJ INTERFACES

2/3/81	RIII telephoned DOJ to discuss Applegate allegations about [illegible] DOJ jurisdiction regarding those matters and to determine if DOJ was interested in pursuing those matters.
2/17/81	OIA (Cummings) visited RIII to discuss the roles of OIA and RIII in responding to Merit Systems Protection Board matter.
[illegible]	RIII telephoned DOJ to discuss 2/26 meeting in RIII with [illegible]
[illegible]	[illegible] on Applegate/Devine issues with OIA (Schneblin).
2/25/81	Applegate/Devine meeting in RIII with OIA (Schneblin) in attendance.
2/26/81	RIII informally discussed potential criminal concerns with OIA (Schneblin).
	[illegible] meeting.
3/81	OIA (Sinclair and Gamble) visited RIII to discuss current RIII investigation res[illegible]
4/17/81	RIII briefed FBI on Applegate issues and informed FBI that NRC was investigating falsification and OIA would be handling it.
4/22/81	RIII and OIA met with DOJ to discuss falsification issues.
4-5/81	OIA conducted conference calls with DOJ regarding criminal investigation approach.
5/5/81	OIA telephoned RIII to discuss parallel proceedings issue and to offer assistance in investigation.
5/6/81	OIA telephoned RIII to state OIA would participate in criminal aspects of investigation.
5/15/81	OIA telephoned RIII to discuss parallel proceedings issue.
5/26/81	Memo from DOJ to OIA resolving parallel proceedings issue.
5/26-28/81	OIA visited RIII to interview investigation team.
6/[illegible]/81	Memo from OIA to RIII regarding DOJ resolution of parallel proceedings issue.

EXHIBIT 7
Page 2 of 2

6/2-11/81	OIA and RIII onsite. RIII briefed OIA on criminal aspects. OIA conducted interviews, some of which were attended by RIII. attended by RIII.
8/18/81	Memo from OIA to DOJ forwarding a copy of the draft investigation report.
9/4/81	OIA and RIII met with DOJ to discuss investigation report. DOJ concurred that release of the report for civil purposes [illegible] [illegible] to discontinue criminal investigation pending completion of civil investigation to avoid parallel proceedings problems.
9/9/81	Memo from DOJ to OIA regarding results of 9/4/81 meeting.
9/17/81	Memo from OIA to DOJ in response to 9/9/81 memo from DOJ to OIA stating disagreement with parallel proceedings issue but that OIA would discontinue pursuit of criminal matters until [illegible]
12/3/81	Memo from OIA to DOJ forwarding a copy of 81-13 as issued.
3/19/82	Memo from DOJ to RIII requesting advice on when RIII expected to complete inspection and submit a final report.
3/22/82	Memo from RIII to OIA regarding coordination of investigation effort.
3/24/82	Memo from RIII to DOJ advising it of anticipated completion date for investigation.
4/21 & 5/7/82	Memos from DOJ to RIII regarding DOJ request for a meeting with RIII and OIA to discuss civil and criminal investigation plans.
5/20/82	RIII and OIA met with DOJ to discuss the status of and plans for the ongoing investigation.

Mr. STELLO. Thank you, Mr. Chairman. The next issue on Zimmer was paper versus hardware. The comment that was made when I was at the meeting, what I needed to know as the chief operating officer that had to make a decision about Zimmer was yes, I already had more than adequate evidence to describe the nature of the failure of the QA (quality assurance) paper system. But the broader question of what is the physical state of the plant, how bad is the hardware, the information you heard from Commissioner Asselstine when he talked about his visit out there, what is the real state of the hardware. Is this plant so bad that it cannot be restored?

If it is strictly a paper problem, then one at least can envision that one finds a way to reconstitute the paper in the plant, and then you have your problem solved. If, on the other hand, it is a broader problem in terms of the magnitude of equipment, that also needs to be replaced. For example, if the very foundation of the building were called into question and its quality was inadequate to perform its safety function, well, then, one ought not to be arguing as to whether or not that facility is okay. From a QA point of view it is unacceptable from a safety point of view because the fundamental system relied on for safety called the containment would not be adequate.

This is an issue that has been with the agency for some time and shortly following Zimmer, as I noted in the comments I provided to the committee. I believe it was Senator Ford who asked for a special study to be made on this very issue about whether the agency was in fact, looking at QA correctly, and one of the major conclusions of that study was that we were preoccupied with the paper review process and didn't have enough people physically in the plant doing exactly the type of thing that Commissioner Asselstine said: Go out and look at the hardware and find out where the problems were.

So, it is a real legitimate question. My need was to find out and assess the true safety status of the plant. There was a group put together to try to make that assessment and physically went out and did both destructive and non-destructive testing of structures and piping systems to try to make that assessment. What they found is a general mixture, but overall that the quality of the systems and the structures that were there were generally reasonably good. They literally took bulldozers and dug up trenches to make an assessment of how the plant looked.

The decision was made in my view, because the cost of restoring what needed to be restored in that plant was going to cost more than the original cost of the plant. I think it was about $1.5 or $1.6 billion, and it was going to cost something in excess of that amount to generate sufficient paper and make the hardware changes that were then found to restore the plant to a level that was acceptable from a safety point of view.

Senator WIRTH. I might just—is this all right, Mr. Chairman, just to go back and forth and try to clarify where we are. I think the issue was not going out and digging them up or the cost of replacing Zimmer, but the issue that is in front of us was your attitude toward the problem at Zimmer. And, as you heard from the witness this morning, there seemed to be from his testimony the perception that you were not treating the hardware problems as significantly as they should have been treated.

Mr. **Stello**. You mean the other way around. Paper, the paper problems.

Senator **Wirth**. No. According to Mr. McCarten, as I understood his testimony this morning, you described this as "paper problems," and in that meeting a number of people had stood up and said these were more than paper problems, these are welding problems, these are design problems, and these are deliberate falsification of data problems. I think that that was not persuasive to you, and I think the record will show that Mr. McCarten said that you then walked out of the room.

Mr. **Stello**. I am going to deal with that in a minute.

Senator **Wirth**. I am sorry, I thought you were finished with Zimmer.

Mr. **Stello**. No, I was not, but let me comment on what you have addressed. What he was basically saying is I was not paying attention to the paper problem. My focus was not on the paper. I understood fully that the documentation at Zimmer was very, very flawed, and they had significant problems in the documentation required, the QA documentation, the paper. What I did not have are the few—in the few examples he cited, is it did not give me any true feeling for the hardware deficiencies that were in the plant that were found out only later after I put together a team and they went out and looked. That is when we truly found out the true nature, the true magnitude of the hardware problems.

When he made a reference to my leaving the room, and it was unfortunate, it would have been nice if I could have sat there, because I think the issue, as I recall then, was the criminal investigation. When I went out—and I remember that day vividly—because I was with Mr. Fouchard, and we walked into a place to have breakfast, and I noticed that Mr. Gamble—I believe it was Mr. Gamble who was there—indicating that they were doing a criminal investigation of the Zimmer facility on the very day I went there.

There was an issue then of being responsible in the Office of Inspection and Enforcement for the safety. I was not responsible for doing the wrongdoing investigation. At that time there was only an Office of the Inspector and Auditor, and the responsibility for doing "criminal investigations" or pursuing them and working with the Justice Department was with that office. There was later an Office of Investigations formed separately, but that was much later than Zimmer, and it was, in fact—part of the reason it was formed was because of the conflicts that arose and confusion in Zimmer which led the Commission to the decision to form a separate office.

But the investigation with respect to the criminal matters of Zimmer were already ongoing at that time. I was aware of that, and what I wanted to make clear, that was not our job. The Office of the Investigator and Auditor made it very clear that was his job, and he was doing it, and there was a great deal of criticism regarding how all of that was done.

Now, that is the last of the comments I wanted to make on Zimmer. I was going to move to South Texas next. If there are any other questions on Zimmer——

Senator **Warner**. Could you give us an estimate of the amount of time that you desire?

Mr. **Stello**. I can finish with no questions in about 6 more minutes.

South Texas, there was mention of the South Texas project, that a team was sent down to South Texas to review it. What Mr. Sinclair failed to admit or suggest was that was the team that I sent down there, and the show-cause order that led eventually to major upheaval in the South Texas project was an order that I signed, and it was at my direction that that was done. I think what he was trying to do was to contrast the two to suggest that my interest in South Texas and the way it was pursued was somehow different than it was in Zimmer, and I tell you that there is just no basis for that.

And let me mention a couple of others that have already been mentioned. Marble Hill. When I went to Marble Hill, I saw the major deficiencies at Marble and shut down that operation until they could get it stopped. The point is when you knew what it is that you had to fix and you could issue a clear instruction order of what to fix, then I was prepared to act. What I wanted was enough information to lead me to the conclusion of what really needed to be done. In the case of South Texas I had it. In the case of Zimmer I was still looking for it.

There were a few issues, one I must say that I have no knowledge of, that it was alleged I set up some sort of a group by the industry as an advisory committee. I have not the vaguest notion what anybody is talking about. I did not set up any such group. I do not know what that issue is. It was mentioned by Mr. Greenspun. I do not have any idea. If someone would enlighten me, I would be happy to address that issue.

Senator **Exon**. Would you address that issue for the record? If you can, check your files and see if there is anything on that because I remember that that was mentioned. Are you certain that that is a foreign name to you? It rings no bells?

Mr. **Stello**. What he was describing does not ring any bell of anything that I was involved in. There was a committee, that with the agreement and permission of the Commission itself, was set up that related to the Office of Investigation and Oversight group, but it had nothing to do with the industry. It was an internal group. Perhaps if there is a way if I could find out, I would be happy to respond.

[The information referred to follows:]

During the hearing, Senator Wirth referred to an advisory committee on the Rights of Licensees which the Nuclear Regulatory Commission tried to establish in 1983. Attached for your information are documents that I obtained from the Nuclear Regulatory Commission dealing with this matter. My recollection, and the documents supporting this view, is that this was an issue that was raised by and administered by the Commission itself. As you will note from these documents, this issue was raised in 1983, prior to my appointment as the Executive Director for Operations in January of 1986. Therefore, staff communication on this matter would have been through the previous Executive Director for Operations, Mr. Dircks.

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Jacob D
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September 13, 1983

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Honorable Nunzio J. Palladino,
Chairman
Honorable James K. Asselstine,
Commissioner
Honorable Frederick M. Bernthal,
Commissioner
Honorable Victor Gilinsky,
Commissioner
Honorable Thomas M. Roberts,
Commissioner
Nuclear Regulatory Commission
1717 H Street, N.W.
Room 1149
Washington, D.C. 20555

Dear Commissioners:

I have the privilege of presenting to you the Report of the Advisory Committee for Review of Investigation Policy on Rights of Licensee Employees Under Investigation.

As reflected in the Introduction to the Report, in response to the charter and specific questions the Commission requested us to address, the Committee considered a broad range of testimony and documents from interested persons and entities. All persons who wished to be heard were given an opportunity to do so in person and/or in writing.

9/14..To OGC for Appropriate Action..Cpys to: Chm,Cmrs,OI,OIA,EDO,SECY
OPE...83-2255

Honorable Nunzio J. Palladino
Honorable James K. Asselstine
Honorable Frederick M. Bernthal
Honorable Victor Gilinsky
Honorable Thomas M. Roberts
Page two
September 13, 1983

All members of the Committee have appreciated the opportunity to serve on this committee. We hope that this report will benefit the Commission. We are most grateful for the invaluable assistance given us by Richard Levi, Esq. of the General Counsel's office. Mr. Levi made himself available at all times, arranged for the two days of public hearings we held, contacted witnesses who wished to be heard, assured compliance with the procedures of the Federal Advisory Committee Act, and provided us with most helpful background material on the issues we were asked to address.

We are looking forward to our meeting with you on September 27, 1983.

Sincerely,

Earl J. Silbert

EJS:gs
Encl.

cc: James A. Fitzgerald, Esq.
Oscar M. Ruebhausen, Esq.
Joseph M. Scott, Esq.
Professor Ralph S. Spritzer

REPORT OF THE ADVISORY COMMITTEE FOR REVIEW OF INVESTIGATION POLICY ON RIGHTS OF LICENSEE EMPLOYEES UNDER INVESTIGATION

Submitted to the
Nuclear Regulatory Commission
September 13, 1983

Earl J. Silbert, Esq.
Chairperson
James A. Fitzgerald, Esq.
Oscar M. Ruebhausen, Esq.
Joseph B. Scott, Esq.
Professor Ralph S.
Spritzer, Esq.

Report of The Advisory Committee For Review of Investigation Policy on Rights of Licensee Employees Under Investigation

Introduction

The Advisory Committee For Review of Investigation Policy on Rights of Licensee Employees Under Investigation (hereinafter "Advisory Committee"), was created by the Nuclear Regulatory Commission (hereinafter "NRC" or the "Commission"). Its charter, attached as Exhibit 1, became effective on February 25, 1983. Subsequently, by letter dated April 11, 1983, attached as Exhibit 2, the Commission delineated "exactly what questions the Advisory Committee should address:"

In addressing these questions, the Advisory Committee has sought and considered a wide variety of documentary and testimonial input. It has held two full days of hearings open to the public. Notice of the meetings, pursuant to the Federal Advisory Committee Act, was published in the Federal Register. All witnesses who wished to be heard had an opportunity to present their views at the hearings. Others made submissions in writing. In addition, the views of some individuals and organizations were actively solicited by the Advisory Committee. Thus the Committee heard from federal investigators and from representatives of industry, unions, and the "public interest." Included among these were the Director of the Commission's Offices of Investigations and his chief assistants, a number of attorneys representing licensees or vendors who appeared individually and/or in behalf of the Atomic Industrial Forum, investigators of other federal agencies, representatives of the International Brotherhood of Electrical Workers and their counsel, a representative of the Professional Reactor Operators Society, and the Legal Director of the Government Accountability Project (GAP) of the Institute for Policy Studies.

Among the written materials reviewed by the Committee were the following: letter dated August 13, 1982, from Gerald Charnoff, Esq. and J. Patrick Hickey, Esq. to the Chairman of the NRC; Inspection and Enforcement: Conflict or Cooperation, an address by Messrs. Charnoff and Hickey to the 1982 Annual Conference of the Atomic Industrial Forum; letters from Richard Littel, Esq. dated May 25, 1983 and June 3, 1983; a letter from James B. Burns, Esq. dated June 3, 1983; a proposed "Advice to Interviewees" presented by Gerald Charnoff, Esq. by letter dated June 3, 1983; a statement of Paul Shoof, International Representative of the International Brotherhood of Electrical Workers; memorandum dated March 4, 1983, to Ben B. Hayes, Director of the NRC's Office of Investigations, from the Secretary of the NRC, pertaining to policies of the Office of Investigations; and a letter dated July 16, 1982 from the NRC Chairman to the then Acting Director of the Office of Investigations, James A. Fitzgerald (a member of the Advisory Committee) delegating certain authority.

Despite the large volume of this testimonial and documentary information and pertinent legal materials considered by the Advisory Committee, the Advisory Committee has concluded that a comparatively brief report to the KRC which focuses solely on the specific questions the Commission wished addressed would be most consistent with the mandate of the Committee.

Question 1. Should the NRC as a matter of policy apprise all interviewees prior to an interview that they have a right to have an attorney present?

Initially, it is important to note that employees of licensees have no "right" to have counsel present during interviews conducted by NRC investigators when the employee has not been subpoened. The Committee understands, however, that the Commission permits counsel to be present at such interviews upon request. The question before the Committee is whether, as a matter of policy, notice of this opportunity to be accompanied by counsel should routinely be given to a prospective interviewee before an interview is conducted.

The Committee has concluded that the NRC should not adopt such a policy. The Committee believes that there are no persuasive policy reasons for adopting such a notice requirement and that there are important policy considerations which support rejection of this proposal.

The primary arguments presented to the Committee in support of routinely providing notice of an opportunity to be accompanied by counsel were that not providing such notice would (1) disadvantage those who are unsophisticated and ignorant of their rights and therefore most in need of this advice, and (2) deter employees from willingly assisting in the investigative process. The Committee believes these arguments must be considered in two separate situations: (1) in the usual interview in which the purpose of the OI investigation is to discover and assemble information to determine whether safety regulations or procedures have been violated and, if so, by whom; and (2) in the unusual case in which the investigation changes from information- gathering to a focused effort to establish the criminal liability of a particular witness.

Most of the interviews conducted by NRC's Office of Investigations (OI) involve persons who are not themselves suspected of wrongdoing, malfeasance or the like. They are being interviewed solely for the information they may have and OI investigators do not have a reasoned basis for believing that their responses will expose them to potential criminal liability. Under these circumstances, the need for advice about counsel appears minimal. Moreover, rather than enhancing the willingness of employees to assist in the investigation, the Committee believes that there is a risk that adopting a mandatory notice policy could impede the investigative process. Regardless of how it is formulated, such notice may convey to interviewees a false impression of personal vulnerability and thereby cause them to resist providing assistance that might otherwise be forthcoming. In addition, providing such notice could unnecessarily formalize the investigator/interviewee relationship with a resulting adverse affect on the flow of information to NRC.

Importantly, the Committee is unaware of any other federal agency with such a policy or practice, despite suggestions to the contrary by several of the Committee's witnesses. If the policy of giving interviewees this notice encouraged cooperation of witnesses, one would expect that other agencies would have adopted such a policy. That they have not indicates that they re at least doubtful that providing the notice would be helpful. The importance of NRC's mission and the fact that the public interest is directly implicated in most NRC investigations suggest that the NRC should not adopt a policy, apparently unique, that might impede its investigations. We therefore recommend against a policy for notice in the normal interview situation.

The Committee has also considered whether notice with respect to counsel should be given when the investigator has reasonable grounds to believe that the interviewee has engaged in wrongdoing, malfeasance or some other dereliction of duty for which the individual could be personally, but not criminally, ccountable.

As a practical matter, it would frequently be very difficult for an NRC investigator to know whether or not the individual being questioned could be held civilly accountable for his or her conduct. The Committee believes that malfeasance and dereliction of duty are so imprecise and that potential civil liability so varied that a notice rule linked to these concepts would be unworkable. Even in those situations in which the risk of a civil sanction is clear, i.e., loss of an operator's license, the Committee believes that OI's need to obtain information that concerns its safety-related functions outweighs any policy reasons for the OI investigator to give notice of the opportunity to consult with counsel.

There remains the situation where the important information-gathering function of OI becomes secondary to the effort to establish criminal liability of an interviewee whom OI already has reasonable grounds to believe has committed a crime. In this narrow instance, the Committee recommends that notions of fairness and decency which lie at the heart of all governmental conduct warrant the "target" being advised of his opportunity to consult with counsel.

Although existing law does not require this notice in noncustodial situations, the Committee does not intend this nor consider it as a substantive departure from existing practice. For example, Special Agents of the Internal Revenue Service by internal rules routinely advise taxpayers under investigation of the so-called *Miranda* rights whether or not the person is in custody and even at a preliminary phase of their investigation when the basis for the investigation is mere suspicion. Other investigative agents, from the testimony before the Committee, have given advice of *Miranda* rights in the past or presently as a matter of individual practice. That they are criminal investigators is relevant but not dispositive. OI investigators have overlapping responsibilities. They may, for instance, be considered criminal investigators under 18 U.S.C. § 1510 for purposes of persons obstructing a criminal investigation.

information they obtain may be referred to the Department of Justice and form the basis for a criminal prosecution.

The Committee recognizes that the primary goal of OI investigators is to get to the bottom of allegations of violations of NRC requirements which may have a potential for causing great harm to the public. There is, accordingly, a strong public interest in the NRC's obtaining necessary information from all possible sources. The notice requirement recommended by the Committee should not unduly interfere with this primary OI function since it is applicable only when the OI already has reasonable grounds to believe that the interviewee has committed a criminal offense and its focus shifts to obtaining further evidence of that person's criminal liability. In this instance, because the witness may not realize he is a target for criminal referral and potential prosecution, the limited notice should be given.

The Committee believes that even in this exceptional situation, the investigator should retain the discretion to determine whether to convey the notice orally or in writing, as well as its precise formulation. While the Committee is mindful that this may result in some lack of uniformity, that is a consequence of preserving the flexibility that the Office of Investigations, in the Committee's view, must have.

Finally, during the course of the Committee's hearings several witnesses suggested that other affected parties, including the licensee and the collective bargaining representative, should routinely be given notice of all interviews so that they could be present or offer to be present, either as participants or observers. The Committee is unaware of any precedent for such a policy and disfavors its adoption by the NRC. In the Committee's view, the routine presence of such additional persons at these interviews would so alter their investigative character as to deprive the NRC of the value of the investigative interview as an enforcement and oversight tool.

Separate Statement of Committee Member Professor Ralph S. Spritzer:

In addressing Question 1, the Committee recommends that a prospective interviewee who is a target of the investigation in the sense that there is reason to believe that he has committed a crime be advised of his opportunity to consult with counsel "where the important information-gathering function of OI becomes secondary to the effort to establish criminal liability" of the interviewee. I agree that considerations of fairness call for advice in this situation. I would not restrict the giving of advice, however, to the case where the investigation of criminal liability is the primary purpose of the investigation. In my view, it is desirable that an effective warning (one that covers the opportunity to seek and be represented by counsel, and the Fifth Amendment privilege) be given whenever there is reasonable likelihood that the interviewee's responses to the investigator may be self-incriminatory, whether or not prosecution, at that stage, is the investigator's primary concern. In short, I believe that it is enlightened public policy to see to it that the interviewee or witness threatened with the danger of self-incrimination is aware of his prerogatives. The sophisticated witness has that awareness. The witness who is uninformed to begin with should stand on equal footing.

Question 2. May, and, if so, should the Commission limit an interviewee's choice of counsel by excluding from the interview any attorney who also represents the entity being investigated?

In responding to this question, we note at the outset that interviews conducted by the Office of Investigations or by the Office of Inspection and Enforcement have almost invariably been conducted without the aid of legal process. Doubtless this will continue to be the usual situation, although there may be occasional instances in which the Commission will resort to the issuance of compulsory process.

Where legal process has not been issued, the prospective interviewee may always decline to appear or to cooperate. Also, of course, he or she may decline to participate unless permitted to appear with counsel of his or her choice. It follows that an investigator has one of two options if an interviewee not under subpoena insists that he or she be represented by a particular attorney: the investigator may permit the attorney to be present or forego the conduct of the interview. 1/

1/ The investigator's decision on whether to forego the interview probably will be made by balancing the need for the interview against the potential prejudice to the investigation of having that particular attorney present at the interview. In this connection we note the apparently wide-spread belief of investigators that the presence of an attorney representing both the entity being investigated and the witness being interviewed may, in some circumstances, harm the investigation by inhibiting the freedom with which employees communicate to NRC investigators. This inhibition stems, investigators and others believe, from the concern that whatever the employee

This right of an interviewee to decline to cooperate if unaccompanied by counsel of his or her choice or, for that matter, by another person such as a union representative, includes the right to be accompanied by counsel for the licensee or other company counsel. The Office of Investigations obviously has no authority to prohibit an interviewee from being represented by such counsel or from being accompanied by a union representative, fellow employee or friend. Moreover, prior to

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(cont.)
states to investigators will be reported to the company, even if harmful to the employee or the company. The representatives of the industry who appeared before the Advisory Committee disputed this, stressing that having available company counsel may, to the contrary, provide reassurance to the witness, help ease whatever anxiety he or she may have, and thereby enhance the freedom of communication.

Another point raised by investigators and other witnesses was the concern that if the NRC allows company counsel to be present at interviews of their employees, the latter will not be able to refuse the offer of company counsel to be present without adversely affecting their employment status with the company. The response of the industry representatives to this is that experience has shown that employees, when offered the assistance of company counsel, often do in fact reject the offer. The empirical evidence presented to the Advisory Committee on these matters was minimal. Although the Committee believes that the responses of the industry representatives may accurately reflect what occurs in some cases, common sense dictates that at least in other cases, employees will be reluctant to refuse the offer to be represented by company counsel and to communicate freely in the presence of company counsel.

One final point is the concern of the investigators that company counsel, when reporting back to the company what transpired in the interview, will reveal the direction and scope of the investigation and thereby potentially prejudice the investigation by allowing the company to affect the availability or content of testimony or documents subsequently sought by the investigators to the company's benefit.

or during an investigation, a licensee, contractor, subcontractor, vendor, or union has the right to advise its employees or union or nonunion members of their right to have present counsel, including counsel for the company or a union representative. This procedure has been followed in prior NRC investigations and no basis exists of which this Committee is aware to preclude it from being done in the future. 2/

Although in informal interviews the NRC cannot prohibit interviewee-selected company counsel, union representative or specific friend from attending the interview, nothing would prevent the investigator from discussing with the company, its counsel, the union, or special friend the reasons why they should not attend an interview of a service employee in a particular case. Similarly, if such counsel, union representative or friend appears at an interview, there is nothing to prevent the Office of Investigations from following a procedure analogous to that which an Internal Revenue Service officer may pursue at an interview of a summoned third party

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2/ The law, of course, makes it unlawful to obstruct an investigation by agents authorized to conduct investigations of criminal conduct. 18 U.S.C. § 1510. Any communication, oral or written, that appeared to violate this law would, we assume, be referred to the Department of Justice for appropriate investigation. It was suggested that guidelines be adopted setting forth what advice could properly be communicated to employees and others without exposure to the charge of obstruction of justice. The Advisory Committee considers this impractical. What is controlling in such matters is the intent with which advice is given, an intent that will be predicated on an assessment of surrounding circumstances. No simple formulation is possible.

witness. See Internal Revenue Service Manual § 4022.42, MT 4000-181. The IRS officer may first explore the potential conflict of interest with the attorney, and if the matter is not resolved, he may ask the witness such questions as whether the witness wishes an attorney to be present, who hired the attorney, who is paying for the attorney, whether the witness understands that the attorney represents others, and whether the witness realizes that there is a potential conflict of interest. As the IRS Manual recognizes, the witness ordinarily is entitled to have counsel of his choice present. Only under "extreme circumstances" will the IRS attempt to seek disqualification of counsel in court. Although these IRS procedures apply to witnesses formally summoned for an interview, the Advisory Committee believes that these procedures can be adapted to the voluntary setting of field interviews by NRC investigators.

The remaining question is whether the Commission, in a situation where it undertakes to compel testimony by issuance of a subpoena, may appropriately issue an order, or seek a court order, limiting the witness' choice of counsel. Section 6(a) of the Administrative Procedure Act broadly provides, "A person compelled to appear in person before an agency or representative thereof is entitled to be accompanied, represented and advised by counsel. . . ." 5 U.S.C. § 555(a). The "plain and necessary meaning of this provision" is that the person summoned is entitled to "counsel of [his] choice," Backer v. Commissioner, 275 F.2d 141, 144 (5th Cir. 1960). Accordingly, the courts have been restrictive of occasional efforts by administrative agencies to exclude, on conflict-of-interest grounds, counsel chosen by a witness. The issue posed by the Commission's Question 2 has much in common with the issue presented to the court of appeals in S.E.C. v. Csapo, 533 F.2d 7 (D.C. Cir. 1976). That case involved the application of an S.E.C. sequestration rule providing that absent permission no counsel for a witness "shall be permitted to be present during the examination of any other witness called in such proceeding." The court stated (p. 11):

> We are of course mindful of the historical antecedents of the sequestration rule and of the important purposes which it is designed to serve. See Torras v. Stradley, 103 F. Supp. 737 (N.D. Ga. 1951); United States v. Smith, 87 F. Supp. 293 (D. Conn. 1949). We do not question its utility in preserving the integrity of an investigation and recognize its practical necessity under certain circumstances. But we are not for that reason at liberty to ignore the clear congressional mandate [Section 6(a), Administrative Procedure Act] referred to above. Thus, before the SEC may exclude an attorney from its proceedings, it must come forth, as it has not done here, with "concrete evidence" that his presence would obstruct and impede its investigation.

An earlier Ninth Circuit case involving the same sequestration rule likewise upheld its "general propriety," but held that it must be accommodated to the demands imposed by the Administrative Procedure Act. S.E.C. v. Higashi, 359 F.2d 550 (9th Cir. 1966). The court concluded that Higashi, a corporate director, might not be deprived of the services of corporate counsel because that would deny him the services of the attorney who might be of greatest help to him. We are satified that a blanket rule excluding "any attorney who also represents the entity being investigated" would not be sustained by the courts. An order of exclusion addressed to a particular situation might be upheld, in the words of the Csapo opinion, if there was "concrete evidence" that the attorney's presence would obstruct the proceeding.

We are accordingly of the view that it would be appropriate to enter or seek an order of exclusion only where (a) a witness has been ordered to testify, and (b) there is concrete evidence that the chosen representative of that witness is in such a position that his participation as counsel would seriously prejudice the investigation.

Question 3. Should the NRC allow interviewees to tape record the interview and/or should the NRC record the interview at the request of an interviewee?

In responding, we have limited our consideration to interviews that are voluntary or conducted without the aid of legal process. These represent the large majority of NRC investigatory interviews. Being voluntary, we believe the interviews accordingly should be conducted in a manner agreeable to the parties.

If an interviewee insists upon tape-recording the interview or having it tape recorded by the NRC, we would expect the NRC to accommodate this wish or terminate the interview.

As subsidiary questions, it is asked:

(a) whether the NRC should advise the interviewee, prior to the interview, of the right to tape record it; and, if so, what form the advice should take?

Tape recording is a privilege or an option available to the interviewer and interviewee. We do not think it rises to the dignity of a right in the context of a voluntary interview. Similar privileges extend to the time and place of an interview and to whether third parties are present or whether a written summary is prepared and signed by the interviewee. If the circumstances of the interview are agreeable to the participants, we do not think any advice need be given as to the other optional ways in which the interview might be conducted.

(b) under what circumstances should the interviewee be allowed to keep the tape or a copy of the tape?

If the interviewee has arranged for the tape recording, it seems to us the dominion over the tape belongs to the interviewee, not to the NRC. It is for the interviewee to decide who is to have custody of the tape and whether copies should be made. If on the other hand the NRC makes the tape recording, the situation is reversed and the decisions are up to the NRC to make. Normally, we would think the NRC should make a copy available to the interviewee, with such charge for its costs as may be deemed appropriate.

(c) whether, if the interviewee records the interview, and the NRC does not, the NRC may insist on having a copy to the tape?

We do not think the NRC is in any position to insist on receiving a copy of the tape. It may request a copy. The interviewee may offer a copy. But if the NRC really wants a copy, it has the option of recording the interview for itself.

Question 4. Should the NRC give all interviewees express grants of confidentiality?

The Advisory Committee believes that the term "confidentiality" must be precisely defined for meaningful discussion and coverage in NRC's investigatory policies. As understood by the Committee, it is the withholding from dissemination to the public (including licensees, vendors, or other employer organization) of the name and other personal identifiers of certain individuals who provide information to the Commission, subject to some limitations as discussed below. It is to be distinguished from formal "informer" designation whereby some agencies essentially contract with carefully screened individuals not to divulge their identities under almost any circumstances in return for information. This latter category may include such measures as providing the individual with money, job and even a new identity if he/she is compromised.

We believe that the considerations against granting confidentiality to all interviewees outweigh those in favor of such a universal grant. The considerations weighing against such a blanket approach are as follows:

- Effective confidentiality agreements are extremely difficult to implement. Not only must the name and obvious personal identifiers, such as position or job title, be protected, but other information as well. This could include relationships to other individuals, presence at events or meetings, and other material from which the interviewee's identity might be inferred. While difficult, this is achievable on a selective basis but as a practical matter not feasible for wholesale use. We perceive that inadvertent breach of the confidentiality promise is very likely if there are widespread confidentiality grants. The publicity resulting from breach of these agreements, however unintentional the breaches may have been, can seriously harm the investigative program by deterring others from coming forward who had important information but who will disclose it only on a promise of confidentiality.

Reports of investigations which contain confidentiality grants are more difficult to use. The more reports are expurgated to preserve confidentiality, the more cryptic they become. Confidentiality requires that the Commission staff endeavor to keep some information from adjudicatory boards and parties or, alternatively, seek protective orders. It may also impede the staff's enforcement purposes. Finally, it could restrict the use of these reports by Congressional oversight committees. [illegible]

Confidentiality grants can make it more difficult to conduct the investigation. For example, when a person has been given confidentiality, the investigators are not free to use his name and other information which may identify him as the source in eliciting information from other interviewees.

- In some instances, confidentiality conceivably may serve to protect wrongdoers.

The major reason for considering a universal express grant of confidentiality is the possibility that it might increase the flow of information to the NRC. However, we are aware of no empirical evidence that this would occur. Indeed, as noted above, the widespread employment of such grants could decrease the flow of unsolicited information through inadvertent breaches of confidentiality. In addition, we believe an experienced investigator will normally not need confidentiality to obtain information from the great majority of witnesses.

a. What limitations, if any, should be placed on grants of confidentiality by the NRC?

The Committee believes that grants of confidentiality should be in writing, signed by an NRC investigator, and contain an acknowledgement by the interviewee that he understands the agreement. Further, we believe it prudent to include in the agreement the following limitations:

- That the interviewee's identity may be communicated to other public agencies if necessary to fulfill their statutory responsibilities; Congre
- That the interviewee may waive confidentiality by taking action inconsistent with confidentiality such as disclosing his/her identity or providing

information to another person that contradicts the information provided to the NRC;

- That the confidentiality is not absolute and the NRC may have to disclose his/her identity in response to an order of a hearing board or a court.

The limitations set out above are not all-inclusive. Because the NRC is free to grant or withhold confidentiality as it sees fit, it may impose any conditions or limitations on the grant which it considers appropriate in a particular case.

We deem it most important that the agreement candidly reflect the limitations on the grant of confidentiality.

b. Should there be different policies for different types of interviewees, e.g., those who come forward on their own, and those whom the NRC has to seek out?

There are various types of interviewees for whom different policies on confidentiality could be forged, e.g., supervisory/non-supervisory, licensee/non-licensee employees, voluntary/compelled, executive/non-executive, those who come forward on their own/those approached by the NRC. Because the subject matter of investigations varies widely, we do not believe that any rigid policy differentiations should be adopted for these various groups. Rather, we believe that the status of various types of interviewees may, on a case-by case basis, be one of several relevant factors which should be considered in determining whether to grant confidentiality to a particular interviewee, the principal factor being the investigation's need for information.

We are aware, however, that Part 21 of the Commission's regulations can be read as providing express confidentiality to certain individuals who voluntarily come forward with information, as opposed to those who are sought out. 10 CFR 21.2. Nonetheless, for the reasons set forth above, we do not believe drawing such a distinction outside of Part 21 is warranted.

c. Should the NRC grant confidentiality in the absence of a request for confidentiality?

The Committee does not believe that the NRC should normally grant confidentiality in the absence of a request. However, if it is apparent to an investigator that there is unusual apprehension on the part of the interviewee or a withholding of information, he should explore this and use sound judgment as to raising the subject of confidentiality on his own initiative.

d. Should the NRC advise witnesses of the availability of confidentiality, and, if so, what form should this notification take?

The Committee believes that the NRC should normally advise individual witnesses of the availability of confidentiality only when, in the judgment of the investigator, the grant of confidentiality may be appropriate and the advice of its availability may persuade an otherwise reluctant interviewee to provide information. The form of notice should be left to the discretion of the investigator. If confidentiality is granted, however, it should be in writing as discussed above.

Respectfully submitted,

Earl J. Silbert

Earl J. Silbert, Esq.
Chairperson

James A. Fitzgerald

James A. Fitzgerald, Esq.

Oscar M. Ruebhausen

Oscar M. Ruebhausen, Esq.

Joseph B. Scott, Esq.

Ralph S. Spritzer, Esq.

September 13, 1983

UNITED STATES NUCLEAR REGULATORY COMMISSION

Charter for Advisory Committee for Review of Investigation Policy on Rights of Licensee Employees Under Investigation

Official Designation

Advisory Committee for Review of Office of Investigation Policy on Rights of Licensee Employees Under Investigation

Objectives and Scope of Activities and Duties

To provide the Commission comments on the subject of rights of licensee employees under investigation. Specifically the Committee is to provide comments on what these rights ought to be, whether such employees should be informed by NRC of their rights, and, if they are to be informed, when and how they should be informed. The Committee is also expected to identify and comment on the considerations that bear upon discretionary NRC actions, including the effectiveness of NRC investigations and fairness to the interviewee and the licensee.

3. Time Period

Three to five months.

4. Agency to Whom the Committee Reports

U. S. Nuclear Regulatory Commission

5. Agency Responsible for Providing Necessary Support

U. S. Nuclear Regulatory Commission

6. Duties

As set forth in Item 2 above.

7. Cost

a. $8,000 (allowed expenses, including travel and per diem).

b. Less than one man-year.

8. Estimated Number of Meetings

Two to three meetings.

Approximately three to five months from date of filing.

9. Date of Filing ________________________________

John C. Royle
Advisory Committee
Management Officer

NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

CHAIRMAN

April 11, 1983

Earl J. Silbert, Esq.
Schwalb, Donnenfeld, Bray & Silbert
Suite 400
2828 Pennsylvania Avenue, N.W.
Washington, D.C. 20007

Re: NRC Advisory Committee on Rights of Employees Under Investigation

Dear Mr. Silbert:

The Commission believes that in order to aid the Advisory Committee in its deliberations it would be advisable to delineate exactly what questions the Advisory Committee should address. Those questions are as follows:

1. Should the NRC as a matter of policy apprise all interviewees prior to an interview that they have a right to have an attorney present?
   - (a) Should there be different policies for those merely being questioned to obtain information and for those being personally investigated, i.e., "suspects"?
   - (b) If the NRC should advise interviewees of their right to an attorney, what form should that advice take, i.e., published rule, oral advice, signed acknowledgement, etc.?
2. May, and, if so, should the Commission limit an interviewee's choice of counsel by excluding from the interview any attorney who also represents the entity being investigated?
3. Should the NRC allow interviewees to tape record the interview and/or should the NRC record the interview at the request of an interviewee?
   - (a) If so, should the NRC advise of this right prior to the interview, and, if so, what form should that advice take?

(b) Under what circumstances should the interviewee be allowed to keep the tape or a copy of the tape?

(c) If the interviewee records the interview but the NRC does not, should the NRC insist on having a copy of the tape?

4. Should the NRC give all interviewees express grants of confidentiality?

(a) What limitations, if any, should be placed on grants of confidentiality by the NRC?

(b) Should there be different policies for different types of interviewees, e.g., those who come forward on their own, and those whom the NRC has to seek out?

(c) Should the NRC grant confidentiality in the absence of a request for confidentiality?

(d) Should the NRC advise witnesses of the availability of confidentiality, and, if so, what form should this notification take?

e this further guidance will assist the Committee in its
The Commission would, of course, welcome any other comments which the Committee might have on these subjects.

Sincerely,

Nunzio J. Palladino

BEST AVAILABLE COPY

Mr. Stello. The last issue is the Steve White phone call that was mentioned at the hearing this afternoon. Let me set the record straight. There have been a number of investigations of that phone call. I have given you the conclusions of it. You have asked what was said. I said to Steve White, I do not think you ought to respond to that letter until you have all of the information. There are several investigations of that, and I believe someone is probably now showing you exactly where that issue came from and when it was investigated.

You said I had no recollection. I said I do not think and now I am going from memory—I do not believe I recall specifically all the phone calls. I think my recollection was that I had at least one phone call. I was later informed that there were records to indicate that there was more than one. I could not recall them specifically just as I could not recall all the phone calls that I had with anyone a month ago. But I did admit that I had a conversation with him. I believe I did recall the one in the van when that was mentioned to me, and I gave a list of the people who were also in the van.

What I said in essence was I do not think you ought to take—you ought to answer that letter, take all the time you need until you know what the facts are. I contend that was a proper response then. I contend it is a proper response now, and if I cannot have those kind of forthright dealings with executives of companies to make sure that they do the right thing, then I do not think I can do my job.

I did not coach him and tell him what to put in the letter, but rather I do not think you ought to respond until you really have all of your facts together. I think if he had done that, it would have saved us all a lot of grief. I certainly did not know what to tell him to put in the letter because I did not know what the nature of the problem was at the TVA except that they had a problem, but I could not describe it. I am not sure anybody could fully describe that problem today.

Senator Wirth. With Admiral White it would take two or three telephone calls to give him that message of do a complete job?

Mr. Stello. No, not to respond. I think the thrust of my comment was, do not respond until you have all the facts and the information.

Senator Wirth. But it would take two or three telephone calls?

Mr. Stello. Apparently. Well, whatever the number was, two or three.

Senator Wirth. Two or three telephone calls to get that message across, do a thorough job?

Mr. Stello. I was not calling him. He was calling me. He apparently was calling other people and apparently had, at least I saw a rather long list of people he called. A number of people that you addressed here today, and I think some of those calls were made in between the calls he was making to me, but I was not calling him. He was calling me.

Senator Wirth. I was not suggesting you were calling him. It would take him two or three telephone calls to you for you to get across to him the message, do the job thoroughly. Why would he call you more than once if your message to him was do the job thoroughly, why would he call you more than once?

Mr. **STELLO**. Maybe he was trying to persuade my mind, which at least in one of them I feel he probably was trying to do, I do not think I can take any more time, I am under pressure. And I think if I remember right, he said I am under pressure from Commissioner Asselstine to respond to the letter and from Congress. So, I think part of it was his feeling of a need to respond, but it has all thoroughly been investigated by more than one party.

The last time I had an opportunity to testify, I went and I read all of the conclusions of those studies, and they were all independent studies and investigations, and there clearly is—no one found anything that has suggested that I acted improperly, and I am telling you as far as I am concerned, I did not act improperly.

One last issue came up, and not in this hearing, but when Congressman Kostmayer was testifying at the hearing, there was some new information I became aware of after that that I think is worth bringing to the attention of the committee. One of the issues and a key issue that he was making was that I knew that the start-up of the Nine Mile Point plant was going to be much earlier.

The project manager on that plant reminded me after the hearing that that was an issue indeed that I did discuss in a television interview. When I was up at the facility at the end of July or beginning of August—I cannot remember the exact date, but it was in that time frame—but in any case there was an actual television interview, and there is a record of that television interview that gives my estimate of what I thought about the start-up of the plant. I think it says in the October time frame. Her reason for remembering it was the company was very, very upset for releasing that information because it sort of would deflate the commitment on their staff to do their job.

I offer that as yet an additional piece of information. It is a new piece of information that I came across that clearly supports the view of why I said what I said, and that—let me set the record very straight. I did not mislead Congress or anyone else, Congressman Kostmayer or anyone in describing what my actions were related to the Fortuna matter. I stand by what I said, and it was one piece of new information that has come to my attention, and I think the committee staff has been made aware of how that information can be obtained if the committee so desires.

Senator **WARNER**. Can you give us the television station name?

Mr. **STELLO**. If you will give me a moment, I will find it.

Senator **WARNER**. You can just supply that for the record.

Mr. **STELLO**. I am through.

Senator **EXON**. Senator Wirth, did you have a question you wanted to raise?

Senator **WIRTH**. Quickly, just one on the Greenspun discussion, Mr. Stello, or whatever this group was. I do not know if you have this or not—the committee can certainly supply this to you. This came initially, as I understand it, and the staff has just given it to me, in written testimony of Mr. Greenspun's to the Senate Governmental Affairs Committee on April 9, 1987. That is page 137 in the hearing record of the committee. This is where he refers to that. I had not heard about this before today, and so if you wanted to look at that and comment on that for the record; it is in his written testimony and Mr. Greenspun makes reference to that.

Mr. STELLO. The Three Mile Island data?

Senator WIRTH. No, this is on the proposed advisory committee on the rights of licensees, the issue that came up that you said you did not know anything about. I am just saying for your benefit, it is right here, and we will give it to you.

[The information follows:]

924

S. Hrg. 100-140

NEED FOR AN INSPECTOR GENERAL AT THE NUCLEAR REGULATORY COMMISSION

HEARING

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

APRIL 9, 1987

Printed for the use of the Committee on Governmental Affairs

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the NRC who could affect or influence OI's ability to detect and report violations if it were realigned may have contributed to this problem."

The legislation proposed by Chairman Glenn would statutorily end the possibility of moving OI. I believe this is a vital step to insure that OI will remain independent, and that wrongdoing will be detected.

The final example I would like to share with the Committee does not concern a particular criminal case; it is the proposed Advisory Committee on the Rights of Licensees, which the NRC tried to establish in 1983. Those behind the establishment of an Advisory Committee sought to notify companies in advance that investigations were being undertaken, and allow utility lawyers to attend all meetings between NRC investigators and company personnel. These and other proposed restrictions would have gone well beyond what the Constitution and federal law require in the way of due process for targets or subjections of investigations, who would, no doubt profit handsomely by insinuating themselves into interviews of employees. This (effort, under the guise of an Advisory Committee), would have carried the special relationship between the NRC and its licensees to preposterous lengths. It was merely a front to protect the utility companies from

Senator WIRTH. Can I ask you what was the deal on the fire regulations? Do you have any comment on that?

Mr. STELLO. Yes, and if I might, I have the answer to the question from Senator Warner. The tape was made on July 25, 1988, tape number 2772, and the tape belongs to Channel 9 in Syracuse, New York.

Senator WARNER. What document are you reading from?

Mr. STELLO. It is a note to file of what happened when I learned about this information.

Senator WARNER. Would you mind including this in the record?

Mr. STELLO. I have no objection to doing so.

Senator EXON. Without objection, so ordered.

[The information referred to follows:]

November 21, 1989

NOTE TO FILES:

Monday, November 20

Mr. Stello requested Mary Haughey to contact Channel 9, Syracuse, NY regarding a tape recording of a conversation he had with reporter Jean Kessner concerning restart of Nine Mile Point. The tape was made on July 25, 1988, and was tape No. 2772.

Ms. Haughey contacted the reporter who was very helpful and allowed her to listen to the tape. The tape essentially said:

> The utility told Mr. Stello that they had projected restart in the October time frame, and that the NRC inspectors had agreed that it could be possible.

Mr. Stello asked me to call the station and request a copy of that tape.

When I called, I spoke to Ms. Rene Starsick who said I would have to speak to the News Director, Mr. Dan Cummings.

Tuesday, November 21

I called Mr. Cummings and he told me that the Senate Armed Services Committee has requested a copy of the tape and that the Station's attorneys were sending a response to the Committee saying that if they want the tape they would have to subpoena it -- and if Mr. Stello wanted a copy, he would have to request it from the Committee.

Donna L. Smith

Station No. 315/446-4780
Mary Haughey 3-2867

Mr. STELLO. Fire protection? I would be happy to deal with that issue. I have provided to the staff two names of the individuals that I thought were directly involved in this issue of whether I or anyone else directed anyone to do anything with respect to changing fire regulations. I provided the names of two individuals that I think in response to my hearing from the last month that could shed some information. The individual is—there is one more individual that came to mind that I did not put there—was a gentleman by the name of Jim Conran who was in every one of the meetings with me, and I believe that he has probably been interviewed in the past and can speak to exactly what it was or was not that I did or did not do.

With respect to the fire protection issue, let me say at the outset that what prompted this issue was derived from technical questions. Our regulations were such that we were requiring people to request exemptions to our regulations for what appeared to be wrong reasons technically.

Two facts as I remember them that relate to—one related to the need to have the source instrumentation to detect neutrons after a fire, the reason you needed them was a requirement in our rules that says that you have to have positive means of measuring reactivity. Well, there is no such thing. Technically there is no such thing as a reactivity meter. You either have to infer it from rod positions or the more preferred approach where they would need an exemption is if they had a boron meter. The boron meter is a much more desirable instrument because what you do is you know the level of the boron in the system, and then you can do the calculations and you would know whether or not you could cool the reactor down some more by the amount of boron that was in the system or whether you had to add more boron, which is the action you would have to take.

Well, we were requiring exemptions for those things. We also had an interpretation that said if you had intervening combustibles between one area and another area that that all became one fire area. But that did not make any sense because by definition, then, you would only have one fire area in the whole plant because there is hardly any place in the plant you could go where you did not have at least cables that are run from one place to another, which is an intervening combustible. I think if you look at the record, it is clear that there was a consensus by the Commission itself that the regulation—excuse me, not the regulation, the interpretation, the guidance to our regulation needed to be modified. I think from a technical point of view that was necessary.

Did I direct someone to go ahead and do this along the basis of it being silly or unnecessary? No. Did I direct them to do it? No.

What I told them to do; there are clearly legitimate technical issues that have been raised that needed to be resolved. That was my job. I was a deputy director in charge of generic requirements, and if new requirements or interpretations by the Commission were out there that were improper, it was my job to do something about it. I take my job seriously, and I wanted to do something about it. That is all I have to say about fire protection.

Senator EXON. Thank you. Let's delve into some questions here, Mr. Stello, to try and get your side of all of these allegations that have been made.

With regard to the Fermi 2 facility, in October 1986 the NRC's Office of Investigations conducted an investigation which concluded that management of the Fermi 2 nuclear power plant had knowingly withheld information from the NRC. Such an action could have delayed Fermi's receipt of its operating license, which the NRC had just approved.

The report of the House Subcommittee on Oversight and Investigations found that, and I quote, "Those at the highest levels of the NRC staff, including Executive Director of Operations Mr. Stello, interfered with and undermined an investigation of the licensee's wrongdoing." Is that true?

Mr. STELLO. No, sir.

Senator EXON. You have stated that you asked your own staff to review the report of the Office of Investigations because you did not believe that the conclusions were supported by the evidence. You have also stated that the Commission gave you the authority to have the report reviewed. What was your authority for reviewing the total of the Office of Investigations report on Fermi 2? When did you obtain such authority? Was the Commission aware of your action?

Mr. STELLO. Yes, sir. Let me see if I can explain the sequence, and I do not think I remember the dates exactly——

Senator EXON. You can supply them for the record, Mr. Stello.

Mr. STELLO. The OI report came out, and I guess it was sometime in October 1986 at which time the Office of the Executive Legal Director, I guess it was at that time Mr. Guy Cunningham, and some of his attorneys, suggested that they had difficulty with the conclusions of the report, and they were not able to support the conclusions, and I reviewed it and had the same view, too.

Now, the question was whether or not the staff had the authority to review such reports and arrive at such conclusions. The issue had, I guess, basically two fundamental aspects to it. First was whether or not the report ought to go to Justice, and my recommendation was if that is a question, please send it to Justice immediately. But in fairness, we also ought to tell Justice that we are looking at it further so that we do not do something that they are not aware of.

The second thing was would the Commission want us to make or reach independent conclusions regarding the OI report. The lawyers, the Executive Legal Director and his staff, were of the view they had to do that because, as attorneys, they were bound by not taking a case to either one of our hearing panels or to court for which they did not in good conscience believe the evidence supported, and so they believed they had to be able to make independent judgment.

That went to the Commission, and I cannot remember when, where the Commission agreed that we had that authority to independently review the OI reports.

Senator EXON. Could you supply that for the record?

Mr. STELLO. I will supply that for the record. I think it was a piece of paper from the Commission itself.

[The information referred to follows:]

Senator Exon requested a copy of the memorandum from the Commission that clarified that the staff had the authority to independently review the conclusions reached in an Office of Investigations (OI) report. The memorandum dated March 18, 1986, which provides that clarification is attached. As I explained during the hearing, this issue arose in connection with an OI investigation report on the Fermi-2 facility. The reason that the Commission's advice was sought on this matter is because some members of the staff did not believe that the NRC staff had the authority to independently review the conclusions of OI and were obligated to accept them at face value. A briefing of the Commission was held which provided the basis for the memorandum attached hereto.

OFFICE OF THE
SECRETARY

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

March 18, 1986

IN RESPONSE, PLEASE
REFER TO: M860312

ACTION - Taylor
Cys: Stello
Roe
Rehm
Sniezek
GCunningham
Denton
Keppler

LIMITED DISTRIBUTION

MEMORANDUM FOR: Victor Stello, Jr.
Acting Executive Director for Operations

FROM: for Samuel J. Chilk, Secretary

SUBJECT: STAFF REQUIREMENTS - STATUS BRIEFING ON FERMI, 2:00 P.M., WEDNESDAY, MARCH 12, 1986, COMMISSIONERS' CONFERENCE ROOM, D.C. OFFICE (PORTION CLOSED--EX. 5 AND 7)

The Commission was briefed by OI and EDO on the status of the pending investigation of Fermi Unit 2.

The Commission, by a vote of 5-0, agreed that when the EDO receives an OI report, for the purpose of an enforcement on a licensing action the staff should examine the underlying facts and evidence and develop its own conclusions. The staff is not obligated to accept without question the conclusion of the OI report.

(EDO)

The Commission also agreed that if the staff reaches a different conclusion than reached by OI on wrongdoing issues, such as willfulness, the matter is to be referred to the Commission for decision.

The Commission further agreed that the decision on whether the threshold for referring possible criminal acts to the Department of Justice has been met rests with OI, in consultation with OGC.

cc: Chairman Palladino
Commissioner Roberts
Commissioner Asselstine
Commissioner Bernthal
Commissioner Zech
Commission Staff Offices
OI

Rec'd Off. EDO
Date 3-19-86
Time 9:10 A

Senator **Exon**. Let us turn to the Roger Fortuna matter once again, which has come up throughout the testimony today. Mr. Stello, Roger Fortuna has recently been cleared of the misconduct charge that was brought against him by your office. If, as the legal opinion concluded, Mr. Fortuna was not refusing to cooperate with the investigation of him, why was he charged with misconduct? Do you believe this charge was improperly brought? Do you believe Roger Fortuna was treated fairly?

Mr. **Stello**. Yes, sir. I have been subjected to a very, as you can see, large number of investigations by the FBI, and the Office of Inspector and Auditor. The same issue occurred with Mr. Fortuna. I was commanded to go to those particular interviews. I went. I gave testimony under oath and affirmation, in at least one case at least—in fact, Fermi is the case—I had my Miranda rights read to me.

So, to suggest that it is wrong for an employee to be asked to go to our Office of Inspector and Auditor and answer whatever questions they may have under oath and affirmation gives me very, very big problems. I have done it, I think it is the right thing to do. I think if there is a need to investigate, the investigation ought to be done, and it ought to be done quickly if it is possible, and it ought to be thorough. That is what their job was, and I do not believe that there was anything wrong in commanding someone to go forward and be subjected to an on-the-record under oath interview.

Senator **Exon**. Can you explain why Mr. Ben Hayes, as Mr. Fortuna's immediate supervisor, was not appointed to the recommending official for Mr. Fortuna?

Mr. **Stello**. Yes. My understanding is that the Office of the Inspector and Auditor believed that some of the allegations and issues may in fact reach Mr. Hayes himself or others within that office, and therefore it would be improper to bring him into that matter.

Senator **Exon**. My time is up. Senator Wirth.

Senator **Wirth**. Let us see if I—just going back now to Roger Fortuna. I was not going to get into this but it has been brought up, so let me ask you about this. In answer to the question earlier about—and in reference to the television interview, the purpose of getting that record out is to show that you were publicly interviewed in July, and at that time said the plant was about to open up, is that right?

Mr. **Stello**. Right.

Senator **Wirth**. And that, therefore, is why you had to move quickly with the contract to Mr. Ellison, is that right?

Mr. **Stello**. No. I believe Congressman Kostmayer suggested that I misled people and I knew that the plant was in fact going to start up much later. I think that is what he said. And I referred——

Senator **Wirth**. I just—let me just—the purpose of your raising the television interview is so that you can prove that you knew in July, and stated publicly in July, that the plant was going to open very quickly and that is why you had to go the contract route with Mr. Ellison. You could not wait for the usual discovery; you could not wait for the usual procedure to be followed. You had to give this contract out to Mr. Ellison; that was the only way given, because of safety concerns, is that correct?

Mr. **Stello**. What I was trying to do is to reflect exactly what I knew and understood at that time——

Senator **Wirth**. Let me just try again.

Mr. **Stello**. And the basis—Senator, I think I know where you are going——

Senator **Wirth**. I am just asking you why is the July date important. Let me put it that way. Why is that important?

Mr. **Stello**. Because Congressman Kostmayer I think, basically said I misled Congress by suggesting that that was, in fact, the case when it was not. I said that my recollection my best information, was at the time that I entered into that contract, I believed that the plant would be starting up sometime in the fall. Statement of fact.

I also told Congressman Kostmayer that had the fact that the plant would start up in the spring rather than the fall, it would not have made any difference to me about the need to get the safety information, that I would feel compelled to get it. But the fact of the matter was, what I understood at that time, was that the plant would, in fact, start up in the fall. Based on everything I had, I cited that as a new piece of information that I did not and was not aware it existed when I testified before, which I think corroborates my basis for the statement that that is what I believed at that time.

Senator **Wirth**. Well, if we might, Mr. Chairman, the allegations made by Congressman Kostmayer were important and very troubling. And what Mr. Stello has attempted to do today, and we will give him the benefit of the doubt, we ought to look at this, is to say, because he was on television in July—or his being on television in July, indicated that, in fact, there was an urgency to doing this, letting the Ellison contract.

But what we ought to do—maybe we can get the staff to do this. I would ask if we could, to see if we can corroborate what the relationship is between the July date and his testimony to Congressman Kostmayer. I find this quite confusing as to the time frame on all of this sort of thing. We are not going to sort it out here at ten minutes of six, when probably your brain is as fuzzy as mine. It could not be. But we might look at what he had said today and whether the appearance on television contradicts the allegations made by Congressman Kostmayer.

Mr. **Exon**. Well, I think that the questions here centered on the question that I asked you, Mr. Stello, and there was a House report that said essentially that you delayed getting into this matter intentionally so that the license could be issued. And I think I quoted the report that said—yes, here it is. The report is from the House Subcommittee on Oversight and Investigations, which found that those at the highest level of the NRC staff, including the executive director of operations, Mr. Stello, interfered and undermined the investigation into the wrongdoing. I believe that is when you got into this matter by saying no, that could not have been, because this was the time in July when you appeared on television and you knew that was coming, is that right?

Mr. **Stello**. I think what you are referring to is the Fermi issue.

Senator **Exon**. Yes.

Mr. **Stello**. Fermi, and I think Senator Wirth is back on Nine Mile Point with Fortuna.

Senator **Wirth**. That is right.

Senator **Exon**. Well, could you elaborate? Let us see if we can get this cleared up, Senator Wirth.

Senator **Wirth**. Let us see if we can do this. It seems that we have conflicting testimony in the response to Congressman Kostmayer and now the date, and I am not sure that I understand why you even brought up the date of the television interview.

Mr. **Stello**. Senator, there is no conflicting testimony. What I told Congressman Kostmayer and what I have told Senator Glenn and what I am telling you, is that when I went into this contract, what I knew was that the plant was likely to be starting up in the fall. I had one more fact that I did not have—piece of evidence, to corroborate and support that that was my state of mind. I have told Senator Glenn, I have told Congressman Kostmayer, and I am telling this committee, that is what I had in my mind when I went forward with that contract, based on everything I knew.

Senator **Wirth**. Why is this important, Mr. Stello?

Mr. **Stello**. Because it happens to be what the facts are.

Senator **Wirth**. But why is this important related to—what allegations does this answer?

Mr. **Stello**. Someone said that—well, if you went—you remember, Congressman Kostmayer was reading Inside NRC; he was reading Nucleonics Week; he was reading a daily report; and I said, look, all these reports say Stello knew that even in September, the first, or the end of August, that the plant was not going to start up for a long time. Do you not remember that? That is what he went through, and I am telling you——

Senator **Wirth**. I have heard this. Tell us why is this important?

Mr. **Stello**. Well, it was important to him because he said I misled Congress. He said that was not what I knew when I went into the contract. That is what he is basically saying—I lied. That when I went into that contract, I knew that plant was not going to start up for a long time. He is wrong. That is not what I knew.

Senator **Exon**. And the evidence is the television interview.

Mr. **Stello**. And I have one more piece of evidence, that television clip that says on July 25 I was up there and that is what I knew then. And there was not a great deal of information that transpired between the time I came back and the time I entered into that contract, which I think was about 30 days, if I recall.

Senator **Wirth**. Well, Mr. Chairman, it is my understanding that Congressman Kostmayer's position, and I do not want to speak for Congressman Kostmayer. We will ask him about this. Congressman Kostmayer's position is that NRC documents said this was not going to open for a long time. So that is what Congressman Kostmayer is saying, because of a whole series of NRC documents, it is very clear that the plant was not going to open up for a long time. Therefore, there was no need to let this very unusual contract.

Mr. **Stello**. And I have explained the NRC documents. They are discussing a meeting of which I was the chair. And there were 40 or 50 other people there that described the meeting that occurred in June, for which time the forecast was a July/August startup of Nine Mile Point plant.

Senator WIRTH. Well, Mr. Chairman, we are not here to try to probe what Mr. Kostmayer said. Between now and the end of January, we can certainly ask Congressman Kostmayer and see how that jibes with what was said today. This is a serious allegation. A Member of Congress saying that Mr. Stello has lied and we ought to clear that up and find out upon what basis——

Senator EXON. It should be straightened out; I agree.

Mr. STELLO. I agree completely.

Senator WIRTH. Let me ask you, if I might, Mr. Chairman. We earlier heard from Mr. Stello relating to Mr. Hayes. The reason that the disciplinary matter, you said, a few minutes ago, as I remember your saying it, the reason the disciplinary matter of Mr. Fortuna was not brought up to Mr. Hayes was that Mr. Hayes had been somehow implicated in all of this, is that what you said this afternoon?

Mr. STELLO. Well, Mr. Hayes came to me, asked me about it and I said, I did not see any problem with it. The decision was being made by others. And when they met to determine whether or not he could be that official, the personnel people and the attorneys, I believe, that were working the case concluded with the head of OIA, that it would be improper for him to do that because of the possibility that this issue could involve him as well.

Senator WIRTH. So you are saying that Mr. Hayes was implicated in some way, is that right?

Mr. STELLO. Could have been.

Senator WIRTH. Now, has that ever come up before?

Mr. STELLO. I do not know.

Senator WIRTH. Has anybody ever said this before?

Mr. STELLO. That he could have been implicated?

Senator WIRTH. Has anybody on the record ever said—have you ever suggested that before; has anybody else ever said that before?

Mr. STELLO. I have not researched the record.

Senator WIRTH. I mean, this is a pretty—I think this is a new allegation now, Mr. Chairman.

Mr. STELLO. But let me set the record straight.

Senator WIRTH. It is my understanding from Senator Glenn's staff that having interviewed any number of witnesses on this front, there was never any information from anybody in a document or any witness, that Mr. Hayes was implicated in the Fortuna investigation. We have heard now from Mr. Stello that, in fact, Mr. Hayes was implicated and that was one of the reasons for the very unusual contract because Mr. Hayes was implicated. Now that is an allegation that, as I understand it, has never been made before and maybe we could leave it for the record, Mr. Chairman. Maybe we could ask Mr. Stello to substantiate, with contemporaneous documents, how Mr. Hayes was implicated in all of this.

Mr. STELLO. I believe I may be able to do that simply. I think that that is discussed in Sharon Connelly's testimony, I think, and I think it was in that record. I will be happy to look for it and provide for the record. I think she did raise that issue.

[The information referred to follows:]

Senator Wirth inquired as to the circumstances surrounding the question of why Mr. Hayes was not used as the recommending official regarding Mr. Fortuna's failure to comply with a directive from Mr. Thompson that required Mr. Fortuna to appear for an on-the-record interview with the Office of Inspector and Auditor. By way of background, Mr. Hugh Thompson was to be the recommending official regarding this matter with Mr. James Taylor identified as the deciding official. Mr. Hayes was concerned about the procedures being followed and asked why he could not be used as the recommending official for the administrative action for failure to comply with Mr. Thompson's directive. As I explained at the hearing, I told Mr. Hayes I would seek the advice of the General Counsel, Mr. Parler, whether Mr. Hayes could be the recommending official with regard to Mr. Fortuna's failure to comply with Mr. Thompson's directive. Since this was an administrative matter, Mr. Parler indicated that it would be acceptable for Mr. Hayes to act in that capacity. I informed Mr. Thompson that I did not object to Mr. Hayes' acting in that capacity with the understanding that he would not have access to the ongoing files in connection with OIA's investigation of this matter. A meeting was held to discuss this matter with Messrs. Hayes, Thompson, Fox, and Dambly. Following the meeting, Mr. Thompson informed me that Mr. Hayes would not accept being the recommending official if he was precluded from having access to the Office of Inspector and Auditor information. It was a unanimous recommendation by Messrs. Thompson, Fox, and Dambly that this would be improper, and Mr. Thompson informed me that he was going to continue as the recommending official. Based on these recommendations, I did not object to that course of action. Clearly, in my view, providing Mr. Hayes access to the files of the ongoing OIA investigation would have been improper since Mrs. Connelly informed me that there was always a potential for other individuals within the Office of Investigations, including Mr. Hayes, to be implicated in the investigation. Mrs. Connelly identified that others may have been implicated in her testimony before Congressman Kostmayer and the specific pages referred to are attached.

In my judgment, Mr. Hayes' demand that he have the prerogative to review information in the OIA files precluded him from being the recommending official.

I am aware of two memoranda that speak to this issue, authored by Mr. Hayes, which I understand have been forwarded to the Committee on Interior and Insular Affairs.

there's absolutely no need for it. If he's an a--e, just continue the conversation--

COMLEY. Yeah.

FORTUNA--and in the fullness of time, his allegations will turn out to be horses--t.

COMLEY. Okay.

FORTUNA. So why try to dump on him. Yeah, it doesn't--all I'm telling you, from our perspective, that shouldn't color a thing. From your perspective, you got to watch your a--, because you're a promoter.

COMLEY. So the thing is it is we just hold him out, and he's anonymous.

FORTUNA. Okay.''

Number three, issuing a subpoena for Mr. Ellison's tapes and documents would have compromised the inquiry.

In my opinion, issuing a subpoena would have compromised OIA's inquiry. OIA did not have subpoena authority and would have had to ask the Commission to issue a subpoena on its behalf. This would have involved a number of people on the Commission staff and in the General Counsel's Office. The existence of the inquiry might have been divulged prematurely to Mr. Fortuna and others it was alleged Mr. Comley was attempting to recruit. Further, there was no assurance Mr. Ellison would comply with the subpoena. One only needs to review the record with respect to the subpoena it that Mr. Fortuna did.

Ms. CONNELLY. That is what we were trying to find out. We had tapes of conversations between he and Mr. Comley, between he and Mr. Ellison. There were conversations between Mr. Comley and other individuals. It was very clear that Mr. Comley was attempting to recruit individuals within the NRC to work with him. It was not so clear whether he was successful. That was the whole purpose of the investigation.

Mr. KOSTMAYER. Well, I still don't understand the answer. What is it that you think--you told me about these other, Ellison and Comley. What is it you think Mr. Fortuna did? What is it that Mr. Fortuna is guilty of?

Ms. CONNELLY. I can't say Mr. Fortuna was guilty of anything because I did not complete the investigation. What we were attempting to do is determine whether there were any violations as a result of Mr. Fortuna's activities with Mr. Comley. There was an indication--

Mr. KOSTMAYER. If I can interrupt, are you now narrowing it down to the relationship between Mr. Fortuna and Mr. Comley? Is that the rub here? Is that the issue here? Is that what you would want to focus on in answering my question what did he do?

Ms. CONNELLY. No, I will focus on whatever you would like me to focus on.

Mr. KOSTMAYER. I want you to focus on what you think he

Ms. CONNELLY. There would have been a number of people that would be privy to the fact that the investigation was ongoing had we requested the Commission to issue the subpoena on our behalf. Also, there was no assurance that Mr. Ellison would respond to the subpoena. There was no assurance that information that he had--

Mr. KOSTMAYER. Well, a subpoena is legal requirement that he respond. That is not really your problem or mine as to whether or not Mr. Ellison will or will not respond to the subpoena. You issue the subpoena. If Mr. Ellison doesn't respond, he answers to the appropriate authority.

Ms. CONNELLY. But I think we only need to look at Mr. Comley's case. A subpoena has been issued to him.

Mr. KOSTMAYER. Let's look at Mr. Ellison's case and the information that Mr. Ellison has. Why didn't you ask for a subpoena?

Ms. CONNELLY. Because if we had issued a subpoena, that would have involved a number of people in the Commission. We had indications that Mr. Comley was attempting to recruit people within the agency. The information about the investigation would have leaked prematurely to Mr. Fortuna and to any others that Mr. Comley might have been attempting to recruit. And--

Mr. KOSTMAYER. Well, Ms. Connelly, I have a vote to go to, and I would be happy to yield to the gentleman from

Senator WIRTH. Fine. Just related to Mr. Hayes, and this is my last question, Mr. Chairman.

Mr. STELLO. Excuse me, but Senator, I want to make something clear. Do you understand Mr. Hayes came to me and asked me if it was okay for him to be the proposing official on the action?

Senator WIRTH. I hear, what you say, but you said a little bit earlier that one of the reasons that he was not involved in this was that you thought he was somehow implicated.

Mr. STELLO. No. No. No. Do not say me. I said——

Senator WIRTH. Well, that is what you said——

Mr. STELLO. I said I did not object.

Senator WIRTH. You just said that about 10 minutes ago.

Mr. STELLO. No. I said that I understood that when this was discussed with the attorneys and our people from personnel, that they were the individuals that decided not to do it. I spoke to Mr. Parler and asked him if there was a fundamental reason from a procedural point of view if Mr. Hayes could not do it, and he indicated there was none. I spoke to Mr. Hayes; I did not object. And then when the matter was elevated with the personnel people and the attorneys, my understanding was that they decided that that would not be the proper thing to do. I understood, and I understood earlier one of the reasons that this contract was kept the way it was, was because of the potential for implication, broader implication to Mr. Fortuna himself.

Senator WIRTH. We will, I am sure, be able to take a look at the record of what you did say that the involvement of Mr. Hayes was and what staff had earlier found out.

A final question, if I might, Mr. Chairman. In late 1985, Ben Hayes, then the director of the Office of Investigations, separately briefed Chairman Palladino and Commissioner Zech about the Office of Investigations' ongoing investigation of the TVA. Since it was established by the Commission in 1982, the Office of Investigations has been responsible for conducting all investigations of alleged wrongdoing by NRC licensees and vendors.

Mr. Hayes suggested that the NRC's handling of TVA matters appeared to be disorganized and that the NRC had no comprehensive program to identify problems or resolve those problems. Mr Hayes recommended the Commission appoint a senior executive to take over responsibility for the TVA project and provide that person with the necessary resources.

According to Mr. Hayes, shortly thereafter, in the presence of other NRC officials, the following dialogue occurred: Stello, standing face to face with Hayes and shaking his fist in Hayes' face said: "Ben, if what you said comes to pass, I am going to get you." Hayes, in jovial tone: "What are you doing Vic, threatening me?" Stello, dead serious, "I do not care how long it takes, I am going to get you."

Within a month of this conversation, former EDO, William Dircks, retired and Stello became EDO.

Stello did not deny that he made the statement; he denied that he was "dead serious." Stello explained at the Governmental Affairs Committee's April 1987 hearing, "For your information, Senator Glenn, I am a very aggressive, very forceful, and very action-oriented manager. I do not run from conflict; I confront it if it is what I believe is right and what is in the best interest of our agency, the NRC, and the purpose we serve, safety."

Now that is the last—do you want to comment on that at all in any way, shape or form, Mr. Stello?

Mr. STELLO. I think this is maybe the 10th time I have been asked about shaking my fist and that whole conversation. I think that the record from the last hearing is clear on that issue. I spoke to it at the last hearing; I do not think I have anything else to add to that issue.

Senator WIRTH. You do not want to say anything in your defense on that subject about—I am raising it because the bully issue has come up five or six or eight times today.

Mr. STELLO. I think there is adequate information to deal with the bully issue. I do not feel the need to add any more. I have described what I am; I think you have heard from more than enough witnesses about my management style to lay rather firm, full background of what it is I do.

Senator WIRTH. Mr. Stello, thank you for being with us for this long afternoon. Mr. Chairman, thank you very much.

Senator EXON. Thank you, Senator Wirth, for your patience and understanding and being with us here from start to finish. And we are about to finish. I suspect we all have our shortcomings from time to time, even us U.S. Senators. Mr. Stello. I suspect that you did not care for Mr. Fortuna a great deal, is that right?

Mr. STELLO. No, sir. I do not have any ill feelings toward Mr. Fortuna. I think the suggestion has been, because there has been conflict between OI, OIA, and myself over a number of investigations, that somehow there is a conflict between Mr. Fortuna and myself. I have not heard any evidence nor has anyone suggested to me that there is indeed a conflict, nor have I heard Mr. Fortuna himself say so.

Senator EXON. Let me ask this last question about Three Mile Island again. I suppose you have been asked this many times and have the answer. With respect to Three Mile Island and that investigation, you became director of the Office of Inspections and Enforcement in July 1979, if I have my facts straight, 4 months after the accident, is that correct?

Mr. STELLO. That is correct, sir.

Senator EXON. The time frame is right. You have testified that you did not become aware of the so-called Hartman allegations. You did not become aware of that, and that there was a leak of some kind with regard to the Three Mile Island story, yet investigators in your office were aware of these allegations way back in the middle part of 1979. Why were you not informed of them by your staff, and, as you have testified, learned about them only through a news report? Can you explain that to us?

Mr. STELLO. This is one of the issues that I think is explained in this FBI report that we cannot talk about. It goes through the sequence of events of what went on. My recollection of the way in which it has been described as to why it did not get raised is Mr. Bob Martin, who was the head of the investigation up at Three Mile Island, and was heading the team that did this interview, believed his responsibilities were to look into the actual sequence of events of things that caused the accident to happen.

He was under the impression that his job was to turn this over to the Special Inquiry Group, the Rogovin Group, that I mentioned. And he did so, and it was his belief that it was their responsibility to get into the root causes and problems that were inherent in the agency and to the industry that probably contributed one way or another to the accident and that should be addressed. So he felt his job was to give it to them. He did. They, in turn, looked at it, and they made a decision not to pursue that in their report, and that matter is also the subject of the investigation.

But clearly, when all is said and done, the bottom line is there just was not any evidence of a coverup.

Senator EXON. Mr. Stello, thank you for all your courtesies and understanding. We started over 5 hours ago, and we are now going to wind it up.

Let me tell you what I think is likely to transpire. The staff has an awful lot of work to do on all the information that we took from 14 witnesses here today. We have many things that we are going to wait for, additional information from the witnesses. I will tell you that there is very likely to be some additional questions that we will ask you for the record and ask you to respond promptly, as you have in the past, once again.

What I understand our basic intentions are likely to be, since I think most of us feel that this matter has gone on long enough; if we can get all the information together, including the information from the House of Representatives, as you have alluded to, Senator Wirth, I would hope that shortly after we come back here in the latter part of January, the committee would meet and decide when we would have a meeting to bring this matter to a head, I think in fairness to you, the committee, the Secretary of Energy, and the President. And I hope that we can resolve this early in the session.

And that is the best that I can tell you right now, but I thought you might be interested to know what is likely to happen, and that will be up to the chairman of the committee, Senator Nunn. I have not had a chance to talk with him about this in detail, but from what I have heard from staff and others, that seems to be a scenario that we will be heading for, and we will not be able to do anything more now until the staff has a chance to get this transcript, get the additional information, and then have a report prepared and ready for the committee when we come back.

Mr. STELLO. Senator, I could not urge you more. I told you why I agreed to take this job. I would be pleased to be confirmed by the Senate and have the job. But our country desperately needs an answer. If it is not me, the faster it is found out either way, the better it is for our country. It is our country that is suffering, and it is suffering badly, because the Department of Defense facilities are in a state of disarray and they really need someone to lead them and to start fixing those facilities. If it is not the will of Congress for it to be me, the sooner that is known the better off our country will be.

I just urge you to do everything that you can to get it decided as quickly as possible. Thank you.

Senator EXON. On that note, we all agree. We thank you again. And we are adjourned.

[Additional testimony submitted for the hearing record follows:]

STATEMENT OF
GRANT C. PETERSON
ASSOCIATE DIRECTOR
STATE AND LOCAL PROGRAMS AND SUPPORT
FEDERAL EMERGENCY MANAGEMENT AGENCY

This is the statement of Grant C. Peterson, Associate Director for State and Local Programs and Support, of the Federal Emergency Management Agency (FEMA). I am pleased to provide this statement in support of the nomination of Victor Stello, Jr., to be Assistant Secretary of Energy for Defense Programs. In my dealings with Mr. Stello, I have found him to be a forthright, capable, and professional administrator. As a manager, he is achievement oriented and he understands radiological emergency preparedness issues.

Previous witnesses before this panel have challenged Mr. Stello's nomination because they feel that Mr. Stello inappropriately influenced FEMA's judgment regarding the offsite emergency response planning for the Seabrook nuclear power plant. This challenge addresses a meeting between FEMA and the Nuclear Regulatory Commission (NRC) held on January 19, 1988. Not only does this impugn Mr. Stello's integrity, it demeans FEMA as well. I welcome this opportunity to set the record straight on both counts. FEMA was not intimidated into changing its position on the adequacy of offsite emergency response planning for Seabrook. The concerns Mr. Stello expressed to FEMA on that occasion dealt with NRC's interpretation of its own regulations and were appropriate.

The record should reflect (1) that FEMA was not pressured to approve the New Hampshire Radiological Emergency Response Plan; (2) that the issue between NRC and FEMA was a narrow one, namely whether the NRC regulations required sheltering for significant subgroups within the entire population of the Seabrook Emergency Planning Zone; and (3) that FEMA arrived at its conclusions about the New Hampshire Radiological Emergency Response Plan for sound reasons of its own.

The issue of whether FEMA had adequate reasons for its position has been extensively examined by three different bodies: the Atomic Safety and Licensing Board, the Atomic Safety and Licensing Appeals Board, and the General Accounting Office. Each of these bodies found that FEMA's actions were appropriate.

The Atomic Safety and Licensing Board held lengthy hearings on offsite safety, several days of which were devoted to the issue of NRC's alleged attempt to influence FEMA. I testified before that board that NRC's emergency planning regulation was one of a number of topics discussed at the meeting of January 19, 1988. In that meeting, I asked for NRC's position if FEMA interpreted NRC's regulations to require sheltering. Mr. Stello stated very clearly that NRC's regulations did not require sheltering. As I further stated in my testimony, I felt no duress during or because of our exchange. My dialogue with Mr. Stello is fully reflected in my testimony which appears at pages 12747 - 57 of the hearing transcript, which are attached as Attachment 1.

The Atomic Safety and Licensing Board considered that testimony and came to the following conclusion:

> 8.93. The Board found no basis whatever to support a charge that FEMA's change in position was a result of political pressure or NRC threats - or that such pressure or threats ever existed. Rather, FEMA's change was brought about by a thorough evaluation of the technical, regulatory, and legal issues involved.

Public Service of New Hampshire (Seabrook Station, Units 1 & 2), LBP-88-32, 28 NRC 667, 774 (1988). An excerpt from the Licensing Board's opinion, from which the above quote is taken, is attached as Attachment 2.

The Atomic Safety and Licensing Appeal Board affirmed that aspect of the decision of the Licensing Board, stating, "Also with regard to the issue of sheltering, for the reasons stated in the Licensing Board's decision, ... we find intervenors' challenges to the change in the FEMA position regarding sheltering are without substance." Public Service of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-924, Slip Opinion, at 69, n. 196, (November 7, 1989). The Appeals Board's finding on this point is attached as Attachment 3.

The General Accounting Office (GAO) conducted an investigation entirely independent of the hearing process. It too found that FEMA had valid reasons for its conclusions about the New Hampshire Radiological Emergency Response Plan. The GAO report concludes:

> In summary, the record in this case demonstrates that various programmatic, technical, and legal factors caused FEMA to determine that the New Hampshire plan met FEMA's emergency planning regulation for the beach population.... The record also shows that FEMA reached this determination on the basis of its own deliberations and information provided by an outside consultant, the state, and NRC.

Letter of February 28, 1989, from Keith O. Fultz, Director, Energy Issues, General Accounting Office, to the Honorable John Conyers, Jr., Chairman, Committee on Government Operations, House of Representatives, at page 6. (Attachment 4.)

Allegations that Mr. Stello inappropriately swayed FEMA's decision regarding the New Hampshire Radiological Emergency Response Plan have already been shown to be unfounded. His nomination as Assistant Secretary of Energy should be judged not on those allegations, but on his solid record of accomplishments. I support that nomination.

ATTACHMENT 1

UNITED STATES
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)
)
EVIDENTIARY HEARING)
) DOCKET: 50-443-OL
PUBLIC SERVICE COMPANY OF) 50-444-OL
) OFFSITE EMERGENCY
NEW HAMPSHIRE, et al) PLANNING
)
(SEABROOK STATION, UNITS 1 and 2))

PAGES: 12487 through 12782

PLACE: Concord, New Hampshire

DATE: May 25, 1988

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UNITED STATES NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Tax50Tt1

In the Matter of:)
)
PUBLIC SERVICE COMPANY OF) Docket Nos.
NEW HAMPSHIRE, et al.,) 50-443-OL
) 50-444-OL
) OFF-SITE EMERGENCY
(SEABROOK STATION, UNITS 1 AND 2)) PLANNING
)
EVIDENTIARY HEARING

Wednesday,
May 25, 1988

Room 302
Legislative Office Building
Concord, New Hampshire

The above-entitled matter came on for hearing, pursuant to notice, at 9:04 a.m.

BEFORE: JUDGE IVAN W. SMITH, CHAIRMAN
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

JUDGE GUSTAVE A. LINENBERGER, JR., MEMBER
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

JUDGE JERRY HARBOUR, MEMBER
Atomic Safety and Licensing Board
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For the Town of Amesbury:

(No Appearances)

A (Peterson) Right, yes, because I ---

Q Yes, I'm getting ahead of myself.

A (Peterson) -- think it's appropriate here for me to get into the January 19th meeting, because we formulated the final draft of the January 24th after that meeting, and I want to cover that. I'm glad to have the opportunity to here to do that, quite frankly.

On January 15th, in the afternoon, I said previously that that was one of the dates that I remember where I was having a briefing on these Seabrook issues, because I was trying to get up to speed on this. And it, to me, was a considerably complex issue, quite frankly, to be very candid in saying that.

And in that meeting, which was held in my office, I got -- my secretary came in and said you have a phone call from Mr. Stello, and I said, fine. You carry on if you would and get the next agenda item set, and I'll go and take it in Dave's office.

I took that call in Dave's office. And Mr. Stello indicated to me that his call was generated because of reports that he had been getting out of these hearings, and was somewhat surprised and concerned that we had this much of a problem with the New Hampshire beach issue.

And then, as my memory recollects, he framed something else that me being new on the job gave me pause to think for a moment. He said, why haven't we been made aware of this, or something to that effect.

And so I said, well, I don't know why you haven't been made aware of it. I would assume that you would have been, but let me check that out.

So I hung up and went back in the meeting, and that's when I turned to Dave and I said, Dave, why aren't you keeping NRC up to speed on this stuff. At which time Dave said, I don't know why NRC isn't up to speed on this, but we're assuming they knew this issue. We filed our testimony and they have representative in the RAC, and quite frankly, I think I overreacted a little bit there with Dave, because I didn't totally have a full grasp of the process.

I then called Mr. Stello back, and he indicated that he -- you know, he wanted to get together at a headquarters level to discuss some issues of concern; that he had a number of issues that he felt we needed to talk about, and let's get these things discussed. I saw absolutely nothing wrong with that. It appears to me that's a very appropriate process. And so we set up a meeting. I cleared my calendar, set up a meeting for January 19th that we concurred on, and I had what I thought was some basic parameters for that meeting, and one was that it was going to be limited to headquarters, high-level people.

And when I say that, I considered that myself, I considered that Mr. McLoughlin, and I considered that Mr. Krimm, and that I assumed that Mr. Stello would come over and bring a couple of his people, and we wanted to keep it at that level. You know, this was the first, I believe the first time I'd ever been in a meeting with Mr. Stello, you know, where I was a real live entity, and I felt that it was very appropriate for the headquarters people to talk back and forth and discuss what was going on and if there was any issues that we needed to discuss. So we set that meeting up.

It was agreed that he would come over to FEMA, and he did so. But when NRC did arrive, the cast had expanded a little bit to not beyond the headquarters people, but it had expanded slightly. And so at the very last minute we expanded our people as well, and brought in Mr. Craig Wingo, who is certainly a very technically qualified person with an engineering degree; and we brought in Margaret Lawless; and we had intended to bring our legal people with us as we had. So we had, as I recall, Mr. Cumming, and we had Mr. Watson.

And you did not come, Mr. Flynn, to that meeting, as I reflect, until NRC was done and was leaving, because you had other business you were taking care of.

So that brings us to the January 19th meeting, if I may.

Q Was there an agenda for that meeting agreed on in advance?

A (Peterson) There was no agenda that I am aware of that was agreed upon by our agency whatsoever.

Q Well, what did you understand to be the topics to be discussed?

A (Peterson) Okay. I had a couple of things that I had triggered myself, and I alluded to one of them, and that was, you know, where are we on the lack of shelter not contravening NRC regs.

No one in headquarters could point to anything that said, or gave a conclusive statement to that issue. So I was going to bring that up. That was one of my personal agenda items.

Also, because Mr. Stello showed in my phone conversation some surprise that we had this kind of concerns about the beach issue, I thought it was extremely appropriate for me to have another agenda item, and that was to make sure before we left that meeting that he was aware that there was also 30 planning inadequacies, and over 50 exercise deficiencies in the New Hampshire plan.

(Continued on next page.)

And so we were a long ways from being able to deal with the decisionmaking process of what is bottom line reasonable assurance or not. We had this many deficiencies out there, and I wanted to make sure he understood that.

And we went into the meeting. Those were basically the two items that I had that I wanted to discuss. However, I knew that there was a lot of things going on in the REP program relative to not only Seabrook, but Shoreham and Pilgrim, and I had talked to Mr. Krimm and said, you need to visit and take the lead on the issues of Seabrook, Shoreham and Pilgrim if we get into such things as scheduling and those kind of events. So you work out some things that you want to talk and discuss with Mr. Stello, but let's let him lead, but we need -- if those issues come about, you're the program manager there, and you take the lead on that.

And as I recollect in the meeting, he certainly did do that.

Q Well, we know that there were a number of topics discussed at the meeting, and I want you to summarize for me the discussion on the sheltering issue.

A (Peterson) Well, I wanted to find out specifically from NRC, as I said before, if the lack of shelter would contravene the NRC's regs. And we talked about that for a time, and I've been trying to remember how I led into this, but I know we had been talking about the issue, and I said something along this line, but it's going to be a paraphrase.

I said, Mr. Stello, what if we demanded that sheltering be required at the beach population, and we said the reason we're demanding it is because NRC's regs require it. Then what would you say to that.

And he said basically, if you did that and said that and you're trying to interpret our regulations to say that, then we would go to war over that issue. And he -- excuse me.

Q And you said?

A (Peterson) And he said it relatively forcefully, which there's nothing out of line or not responsible for doing that in a meeting between people.

And I said back to him, I said, Mr. Stello, you know, we can assume this rough, tough, and hard to bluff stature ... you wish, but it isn't going to get you or me or anyone else anything.

And at that time I grinned at him, and he grinned back, and a few people giggled a little, and he said, well, you know, where do you want to go from here. And I said, I want to take a caucus for a couple of minutes.

And so we did. I got my people off to the side and I said, well, we've got the issue on the floor, and how do you think we ought to bring it to fruition. And they said, the only way we can deal with this is NRC has to provide us that information in writing.

So we came back, and we put that to NRC. And we said, what you're telling me then is that the lack of shelter will not contravene your regulations; is that right. And they said, yes, that's right.

Then I said, all right, we want it in writing. Now I can't remember if I said we want it in writing, or if I put that in the lead of someone else, but the question was very specifically stated to NRC that we wanted it in writing. And they said, you'll have it. And as far as I was concerned, I felt that that was a word of statement, and I expected to receive it in writing, and later we did receive a piece of information on that.

There was from there a fair amount of exchange on when can you do exercises, and Mr. Krimm handled most of those issues, and I can try to relay those discussions, but I think they would be much more correctly relayed to this body if Mr. Krimm did it.

Q I'll ask you the same questions I asked Mr. McLoughlin earlier.

Did anyone in the NRC side of the room advocate a certain conclusion as to adequacy of the plans or reasonable assurance?

A (Peterson) No.

Q In what sense, if any, did you come out of the room with a different position than you went into the room?

A (Peterson) I didn't have any position leaving th room that was any different than when I went into the room other than the fact that I anticipated getting a written statement from NRC.

In fact, I've thought about this extensively, and we concerned in that -- prior to that meeting and in that meeting that I left an opinion -- a statement with NRC, and we said a statement before I left that I think speaks to the issue. And I basically explained towards the end of that meeting that I still wanted to see that the sheltering option had received full consideration by New Hampshire, and that I intended to ask them to do that.

Q And you said that in the meeting?

A (Peterson) We said that in the meeting. Now that a paraphrase, but it got out.

Q And how did the NRC people react to that?

A (Peterson) There was really no reaction one way or the other. They understand that was the course we were going to be on.

Q There's a report circulating that you negotiated away a reasonable assurance finding. How do you react to that?

A (Peterson) That is an absolutely incorrect report or assumption.

Q Okay, is there anything else you found significant about the meeting of January 19th?

A (Peterson) No, I think that pretty well terminated it. It ran from about -- it was supposed to start about 1:00; didn't really get started until 1:30 or so, and somewhere around 5:00 we adjourned.

I would like to say overall, you know, it was a discussion of headquarters people, and I felt absolutely no duress by what was said in that meeting, and it was an exchange amongst executives, and there was no -- I perceived no threat or duress there whatsoever, and I think that needs to go on the record.

Q Even the supposed declaration of war, you didn't consider that duress?

A (Peterson) No, that really didn't bother me. I've been in a lot of meetings in five years as an elected official, and, you know, that statement really is much milder than a lot of them I've heard, and I didn't take it that way, and I felt that he basically was saying, look, if you're going to try to interpret our regulations, then, you know, we cannot tolerate that, and we would go to war was the word, and I assumed that meant that we would legally address it. That's what I assumed it meant.

Q Okay. From Mr. McLoughlin's account, the next significant event occurred on January 22nd. Would you --

JUDGE LINENBERGER: Mr. Flynn, before we leave January 19th, I'd kind of like to get Mr. Peterson to close the loop on something he said was in his mind before he went int that meeting; namely, he thought it was important to get an understanding of whether Mr. Stello realized there had been inadequacies and discrepancies in the plan.

Did you come away with a feeling that he did understand that?

THE WITNESS: (Peterson) I think when it was put to him very forthrightly, that I recognized a certain degree of surprise in his reaction.

JUDGE LINENBERGER: As though he were hearing it for the first time, perhaps?

THE WITNESS: (Peterson) Well, I don't know that he was hearing it for the first-time, sir, but I would say that, in observing his reaction to it, that I don't think he had an -- he may not have an understanding at that time of the severity of 30-some planning problems and 50-some exercise problems.

JUDGE LINENBERGER: Thank you.

Sorry, Mr. Flynn.

MR. FLYNN: Quite all right, Your Honor.

BY MR. FLYNN:

Q Well, in that line, Mr. Peterson, do you -- was it your impression that he had an appreciation of those thing when he left the meeting?

A (Peterson) I think he had an appreciation of those when he left, and I got the feeling that he would probably be quite well briefed from that point on.

Q I want to turn now to January 22nd, unless you feel there is something in between the 19th and the 22nd that we need to talk about.

A (Peterson) I don't have anything in my memory, Mr. Flynn, that, you know, is a trigger between the 19th and the 22nd.

Q I'd like to hear your account of your involvement in the meeting at -- in the would-could meeting.

A (Peterson) I would first like to say that the January 19th meeting did not trigger the January 22nd meeting in any way.

We've talked at some length about the concerns and considerations that Mr. McLoughlin has put on the record here. I was receiving similar support for those concerns from Mr. Krimm, from Mr. Wingo, and certainly from Mr. Cumming on a repeated basis.

And so my thrust was, at that time, that all of the concerns that had been -- has been voiced here and any other that might raise should be put on a table and should be discussed. And if there was merit in filing a modified position, that it should be addressed sooner rather than later.

I felt that there was one individual who was the very best qualified to continue to do this, and that was Mr.

ATTACHMENT 2

Cite as 28 NRC 667 (1988) LBP-88-32

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Ivan W. Smith, Chairman
Gustave A. Linenberger, Jr.
Dr. Jerry Harbour

In the Matter of

Docket Nos. 50-443-OL
50-444-OL
(ASLBP No. 82-471-02-OL)
(Offsite Emergency Planning)

PUBLIC SERVICE COMPANY OF
NEW HAMPSHIRE, *et al.*
(Seabrook Station, Units 1
and 2)

December 30, 1988

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PARTIAL INITIAL DECISION

(New Hampshire Radiological Emergency Response Plan)

1. INTRODUCTION

Background

1.1. This Decision addresses all contentions in this proceeding with respect to radiological emergency response planning for that portion of the emergency planning zone (EPZ) for the Seabrook Station (Seabrook) which lies within the State of New Hampshire. Seabrook is a nuclear power facility located in the Town of Seabrook, New Hampshire, constructed, and to be operated, by the New Hampshire Yankee division (NHY) of Public Service Company of New Hampshire, the lead owner of Seabrook.

1.2. The emergency plan litigated in this phase of the hearings is known as Revision 2 of the "State of New Hampshire Radiological Emergency Response Plan" (hereafter NHRERP).

1.3. Of some 122 contentions proffered by Intervenors for litigation in the NHRERP phase of the hearings, various prior rulings of the Atomic Safety and Licensing Board on objections made to admission and motions for summary disposition had, prior to the start of the evidentiary hearings, reduced the number of contentions remaining for litigation to a total of twenty-six. These contentions were prosecuted by the Attorney General of Massachusetts and Intervenors New England Coalition on Nuclear Pollution (NECNP), Seacoast Anti-Pollution League (SAPL), Town of Hampton (TOH), Town of Hampton Falls (TOHF), Town of South Hampton (TOSH), and Town of Kensington (TOK).

1.4. The other active parties to the proceeding are the Applicants, the Staff of the U.S. Nuclear Regulatory Commission, the Town of Rye, the Town of Amesbury, and the Attorney General of the State of New Hampshire. In addition, although not a party as such, the Federal Emergency Management Agency tach. 3, at 1; Tr. 10,687-88) with an average dose reduction factor of tter than 0.9 (Tr. 10,764-65). Materials offered by the Intervenors as to suitable accommodations included within the study, even if fully credited, ly eliminate some 20% of the existing shelter potential. *Compare* Goble nel Dir., ff. Tr. 10,963, at 58, *with* Appl. Exh. 2, at 7. Indeed, according to e Applicants and Staff, even accepting Mass AG's witnesses' estimate of the ak population involved and their further estimates of inaccessible shelter space *ee* Goble Panel Dir., ff. Tr. 10,963, at 35), there is sufficient available space to dequately accommodate that population. Tr. 11,415-18; *compare* Tr. 11,609-3; *see* Appl. PF 10.1.63.

8.84. In the very limited cases where sheltering would be deemed in advance o achieve dose savings (gaseous release, arriving early, with a short duration ompared to extended evacuation time estimates), it is unlikely that evacuation would afford very much dose avoidance. That is one of the premises underlying a rare choice of sheltering. In fact, Dr. Goble believes that sheltering is the only response that would do any good in a "puff" release. Goble Panel, ff. Tr. 10,963, at 15-16. It follows, then, that sheltering would be the protective option even if there were not enough shelters for the entire beach population. The exact amount of sheltering, exceeding any significant amount, therefore, is immaterial to its choice as a protective action in the circumstance presented to us as sheltering situations.

8.85. The Board has considered the proposed findings that the owners of establishments in the beach communities would close their doors to the transient beach population because of hostility toward the utility. We reject that proposition because it is logically flawed. There is no reason why beach area proprietors would transfer their hostility to the beach population. It is more likely that, in an actual emergency, the transient beach population seeking shelter would be seen as fellow victims.

FEMA's Change of Position

8.86. FEMA changed its position on the beach population sheltering issue. On September 11, 1987, FEMA filed proposed testimony in this proceeding in which it stated that, considering the evacuation time estimates for Seabrook, "it appears that thousands of people could be unable to leave during an accident at Seabrook involving a major release of radioactivity—without adequate shelter for as much as the entire duration of that release." Therefore, according to FEMA, until the beach protection issues are resolved, FEMA would not be able to conclude that the New Hampshire State and local plans to protect the public in the event of an accident at Seabrook are adequate to "protect the public health and safety by providing assurance that appropriate measures can be taken offsite in the event of a radiological emergency." *Citing* FEMA regulation 44 C.F.R. § 350.5(b).

8.87. The proposed FEMA testimony had been prepared by, and was to have been presented by, Mr. Edward A. Thomas, Chief of the Natural and Technological Hazards Division, FEMA Region I. Mr. Thomas was then also the Chairman of FEMA's Regional Assistance Committee for Region I. The September 11, 1987 proposed testimony was never offered by FEMA. Instead, FEMA presented the testimony of William R. Cumming and Joseph Keller. Cumming and Keller, ff. Tr. 13,968. Mr. Keller's portion of the FEMA testimony has been adopted almost in its entirety by the Board in the findings above. As can be readily observed, FEMA arrived at quite a different conclusion in the testimony received into evidence. Mr. Cumming, a FEMA attorney with pertinent program responsibilities, contributed to FEMA's testimony by explaining the developments leading to FEMA's current position, and the legal basis for FEMA's position. *Id.* at 1-7.

8.88. Signs that FEMA's position was beginning to change emerged in its proposed supplemental testimony of January 25, 1988. There FEMA explained that it could not conclude that the NHRERP was adequate until it is clear that New Hampshire has considered and explained the use it intends to make of sheltering. Not that FEMA was imposing a requirement that sheltering be available, but if New Hampshire did not intend to employ sheltering for the transient beach population, FEMA expected to review the rationale for that choice. *Id.* at 2. It was New Hampshire's response to FEMA's comments and FEMA's subsequent review of that response that led to much of the substantive evidence adduced on the issue of sheltering the transient beach population.

8.89. The full swing of FEMA's position became apparent on March 14, 1988, when FEMA again filed proposed testimony explaining that the September 11, 1987 proposed testimony was outdated. FEMA found that the pertinent planning elements of NUREG-0654, J.9 and J.10.m, were now satisfied.

8.90. The Intervenors reacted strongly. Where once they perceived that the rebuttable presumption attendant to a FEMA finding was theirs, now the presumption would work against them. 10 C.F.R. § 50.47(a)(2). They set about trying to recapture the FEMA presumption, or, failing that, at least to destroy any advantage to Applicants' case. Based in part upon a deposition of Mr. Thomas, Intervenors began a large and aggressive discovery program founded on the proposition that the original FEMA position had yielded to improper political influences and to threats from NRC Staff officials.

8.91. The Board took over active management of the controversy. In part to reduce unnecessary discovery burdens, and in part to ensure accuracy and public confidence in the hearing, we invited Mr. Thomas and the cognizant FEMA and NRC officials to testify.

8.92. The Board received the testimony of FEMA's Associate Director for State and Local Programs and Support, Mr. Grant Peterson; FEMA's Deputy Associate Director for State and Local Programs and Support, Dr. David McLoughlin; and FEMA's Assistant Associate Director for the Office of Natural and Technological Hazards, State and Local Programs and Support, Mr. Richard Krimm. These officials had the principal responsibility within FEMA for establishing the relevant FEMA policies and regulatory positions as well as managing the respective programs. Collectively, they were responsible for FEMA's change of position on the sheltering issue. They were selected by the Board to appear in consultation with the Intervenors. For 3 days they were subject to extensive examination and cross-examination. Tr. 12,649-782, 12,788-13,053, 13,061-298.

8.93. The Board found no basis whatever to support a charge that FEMA's change in position was a result of political pressure or NRC threats — or that such pressure or threats ever existed. Rather, FEMA's change was brought about by a thorough evaluation of the technical, regulatory, and legal issues involved. *Id., passim. See also* Appl. Exh. 38 (Letter to Senator Glenn from FEMA Director Becton, May 13, 1988). After hearing from the FEMA officials, the Board found no need to hear from NRC Staff officials on the matter in controversy. Mr. Thomas' testimony had no significant effect upon the weight to be given FEMA's final testimony. Tr. 13,684-879.

8.94. The digression into the reasons for FEMA's change of position was in the nature of discovery. It produced relatively little information on the merits of the Intervenors' sheltering contentions, and what little information was developed was reproduced in other evidence. Consequently there would be no benefit to this decision to be gained from further review of the matter. There is no need to discuss the Intervenors' extensive proposed findings respecting FEMA's change.

8.95. FEMA's Regional Assistance Committee (RAC) contributes advice on FEMA's review of emergency plans. It is an interagency committee in each region. In Region I the RAC is comprised of nine federal agencies: FEMA, NRC, EPA, Departments of Energy, Interior, Health and Human Services, Transportation (Coast Guard), Commerce (NOAA), and Agriculture. FEMA Dir., ff. Tr. 3088. FEMA's final position on the beach population sheltering issue had the support of a majority of the Regional Assistance Committee. The earlier position did not have Regional Assistance Committee approval. Appl. Exh. 38; Staff Exh. 2(a) and Exh. 3. In any event, FEMA's position on the sheltering issue, with nothing more than its technical and regulatory analysis, is supported by the preponderance of the reliable, probative, and substantial evidence.

ATTACHMENT 3

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Administrative Judges:

G. Paul Bollwerk, III, Chairman
Alan S. Rosenthal
Howard A. Wilber

November 7, 1989
(ALAB-924)

In the Matter of

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, et al.

(Seabrook Station, Units 1 and 2)

Docket Nos. 50-443-OL
50-444-OL
(Offsite Emergency Planning Issues)

John Traficonte, Boston, Massachusetts (with whom Alan Fierce, Boston, Massachusetts, was on the brief), for the intervenor James M. Shannon, Attorney General of Massachusetts.

Diane Curran, Washington, D.C., for the intervenor New England Coalition on Nuclear Pollution.

Robert A. Backus, Manchester, New Hampshire, for the intervenor Seacoast Anti-Pollution League.

Paul McEachern, Portsmouth, New Hampshire (with whom Matthew T. Brock, Portsmouth, New Hampshire, was on the brief), for the intervenor Town of Hampton.

Thomas G. Dignan, Jr., Boston, Massachusetts (with whom George H. Lewald, Kathryn A. Selleck, Jeffrey P. Trout, Jay Bradford Smith, and Geoffrey C. Cook, Boston, Massachusetts, were on the brief), for the applicants Public Service Company of New Hampshire, et al.

Sherwin E. Turk for the Nuclear Regulatory Commission staff.

DECISION

In order to resolve one of the central issues presented by the pending appeals of intervenors Attorney General of Massachusetts (MassAG), the New England Coalition on Nuclear

Pollution (NECNP), the Seacoast Anti-Pollution League (SAPL), and the Town of Hampton (TOH) from the Licensing Board's December 30, 1988 partial initial decision on emergency planning for the New Hampshire portion of the Emergency Planning Zone (EPZ) for the Seabrook Station,[1] in ALAB-922 we certified to the Commission an issue concerning the meaning of the term "reasonable and feasible dose reductions under the circumstances" as used in its 1986 Shoreham[2] emergency planning decision.[3] Despite the pendency of that certification, we believe it is appropriate to address at this time certain additional issues raised by intervenors in their appeals.

In its December 1988 decision, the Licensing Board found that the New Hampshire Radiological Emergency Response Plan (NHRERP) met the Commission's emergency planning standards. As previously noted, intervenors have raised a variety of challenges to the legal and factual findings made by the Licensing Board in support of its determination. In this decision, we will address issues raised concerning those portions of the Licensing Board's decision titled "Letters of Agreement," "Transportation

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[1] LBP-88-32, 28 NRC 667 (1988).

[2] Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-86-13, 24 NRC 22, 30 (1986).

[3] ALAB-922, 30 NRC ___ (Oct. 11, 1989).

Availability and Support Services," "Decontamination and Reception Centers," and "Sheltering of Beach Population."[4]

I. LETTERS OF AGREEMENT

Under the Commission's emergency planning regulations, emergency plans such as the NHRERP must assign the primary emergency response responsibilities among the utility and appropriate state and local emergency response organizations; establish the responsibilities of supporting organizations; and ensure that arrangements have been made for effectively using assistance resources.[5] Guidance for fulfilling these requirements has been provided in NUREG-0654/FEMA-REP-1 (NUREG-0654), a document issued jointly by the NRC and the Federal Emergency Management Agency (FEMA).[6] Among other things, NUREG-0654 declares that written agreements, also referred to as letters of agreement (LOAs), should be obtained from various participants in the emergency planning process to show the allocation of operational responsibilities and the availability of assistance from various sources.[7] Before us, intervenors SAPL and TOH contend that the Licensing Board erred on a number of potential shelters have been identified pursuant to our remand, it then will be appropriate for the Licensing Board (and for us) to address any intervenor concerns relative to the adequacy of that shelter.[196]

---

[4] Intervenors' challenges to other portions of the Licensing Board's December 1988 decision will be dealt with in a subsequent issuance.

[5] 10 C.F.R. § 50.47(b)(1), (3); id. Part 50, App. E, § II.B.

[6] NUREG-0654/FEMA-REP-1 (Rev. 1), "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants" (Nov. 1980).

[7] Id. Criteria II.A.3, II.C.4, II.P.4.

---

[196] Before us, intervenors have challenged the adequacy of the Stone and Webster shelter survey as to the quality, quantity, and availability of the shelter it identifies. The Licensing Board found that despite problems with the Stone and Webster survey, it nonetheless identified more than twice the shelter that would be required to accommodate the peak beach population with an average dose reduction factor of 0.9 or better. LBP-88-32, 28 NRC at 771-72. This made intervenor challenges to the quantity and quality of the shelter immaterial. Id. at 772. The Licensing Board also refused to accede to intervenors' challenge to the availability of the shelter based upon the theory that a significant number of beach community establishments would refuse to give shelter to the beach population. Calling intervenors' argument "logically flawed," the Licensing Board concluded it was more likely that the establishment owners would see the transient beach population as fellow victims and afford them shelter. Ibid. In light of our determination on implementation, we find it unnecessary to address these issues now.

Also with regard to the issue of sheltering, for the reasons stated in the Licensing Board's decision, id. at 772-74, we find intervenors' challenges to the change in the FEMA position regarding sheltering are without substance. We likewise reject the MassAG's assertion that the Licensing Board improperly denied as untimely both his June 14, 1988 motion seeking admission of certain rebuttal testimony concerning the applicants' and FEMA's positions on sheltering and his July 6, 1988 motion for reconsideration. In support of its determination, the Licensing Board found that the MassAG knew the substance of the applicants' and FEMA's positions on sheltering and thus was able to submit rebuttal testimony well in advance of the June 1988 motion and that he allowed three weeks to lapse between its June 16 oral ruling denying the MassAG's motion and the submission of his motion for reconsideration. Memorandum and Order of Sept. 9, 1988, at 4-8 (unpublished). In light of the broad discretion afforded licensing boards in the conduct of the proceedings before them, determinations on such questions as the timeliness of motions are not likely candidates for reversal so long as they have a rational foundation. ALAB-832, 23 NRC at 159. The Board's determination in this instance demonstrated such a rational foundation.

ATTACHMENT 4

Federal Emergency Management Agency
Washington, D.C. 20472

MAR 7 1989

MEMORANDUM FOR: Grant C. Peterson
Associate Director
State and Local Programs and Support Directorate

FROM: John T. Thiede
Inspector General
Office of Inspector General

SUBJECT: GAO Review of Facts Influencing FEMA's Review of the Adequacy of the Emergency Response Plan for the Seabrook Nuclear Power Plant (301819)

The General Accounting Office (GAO) initiated the subject review in July 1988 at the request of Representative Jack Brooks, Chairman, Legislation and National Security Subcommittee, House Committee on Government Operations. The Congressman requested that GAO determine if there was a technical or other basis for FEMA's change of heart concerning the Seabrook Emergency Response Plan and to describe that basis.

GAO has closed this review by issuing a letter to the Chairman of the House Committee on Government Operations. A copy is attached for your information.

If you have any questions, please have a member of your staff contact Jane Altenhofen on 646-3954.

Attachment

GAO
United States
General Accounting Office
Washington, D.C. 20548

Resources, Community, and
Economic Development Division

February 28, 1989

The Honorable John Conyers, Jr.
Chairman, Committee on
  Government Operations
House of Representatives

Dear Mr. Chairman:

On June 1, 1988, the former Chairman, Legislation and National Security Subcommittee, House Committee on Government Operations, asked us to determine the basis for the Federal Emergency Management Agency's (FEMA) changing its position concerning the adequacy of New Hampshire's emergency response plan for the beach population near the Seabrook nuclear power plant. The former Chairman was also concerned about allegations that the Nuclear Regulatory Commission (NRC), Governor of New Hampshire, or White House pressured FEMA to change its position. This letter provides you information on these issues and concludes our work related to this request.

In summary, in June 1987 FEMA concluded that the New Hampshire plan did not provide a range of measures to shelter the beach population if an accident occurred at the Seabrook plant. On the basis of various programmatic, technical, and legal factors received during the subsequent year, FEMA concluded that immediate evacuation, rather than sheltering, would be the primary protective measure for the beach population because evacuation would result in greater radiation dose savings from an accident. Therefore, in June 1988, FEMA determined that the New Hampshire plan adequately addressed the beach population issue. In addition, the record shows that FEMA reached this determination on the basis of its own deliberations and information provided by an outside consultant and others, such as NRC.

FEMA'S ROLE IN THE LICENSING PROCESS

FEMA, which serves as an advisor to NRC in the licensing process for nuclear power plants, reviews and makes findings and determinations on the adequacy of off-site state and local radiological emergency plans and preparedness. This process begins when a governor or designee submits state and local plans to FEMA for its review. The review process includes (1) an evaluation of the plans by the regional assistance committee (RAC)[1] for compliance with joint NRC and FEMA emergency planning criteria (NUREG-0654), (2) at least one RAC-observed exercise that tests state and local governments' ability to implement major portions of the plans, and (3) a meeting with state and local government officials and the public to discuss, and receive comments on, the plan and the exercise.

At the completion of the review process, or earlier if requested by NRC, FEMA determines whether the off-site plans meet its regulatory criteria. The criteria, found in 44 CFR 350.5(a) and (b), states in part that FEMA must determine that the plans provide reasonable assurance that appropriate protective measures can be taken to protect the public in the event of a radiological emergency. FEMA provides its determination to NRC.

However, the final decision on the adequacy of overall emergency response planning, as well as other radiological health and safety issues, rests with NRC. NRC regulations require that--except for loading fuel and operating a plant at low power for testing purposes--no operating license for a nuclear power reactor will be issued unless NRC can be reasonably assured that adequate protective measures can and will be taken in the event of a radiological accident (10 CFR 50.47). The Atomic Safety and Licensing Board (ASLB)[2] makes this determination for NRC. ASLB decisions may be appealed to an Atomic Safety and Licensing Appeal Board and, where NRC does not choose to review its decision, the appeal board decision becomes the final agency position, subject only to review in a federal court of appeals.

On December 9, 1985, New Hampshire submitted a radiological emergency response plan for the communities near the Seabrook plant. FEMA conducted a full field exercise of the plan in February 1986 and issued its report in June 1986. Subsequently, the state submitted a revised plan, and FEMA and the RAC completed their review of the revision in June

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[1] The RAC consists of 10 federal agencies (FEMA, the Environmental Protection Agency, NRC, and the Departments of Agriculture, Commerce, Defense, Energy, Health and Human Services, the Interior, and Transportation). The cognizant FEMA regional representative chairs the RAC.

[2] The ASLB, established by the Atomic Energy Act, has three members including attorneys and others with expertise in various technical fields.

1986. The state submitted a second revision on September 8, 1986, and the results of the FEMA/RAC review were provided to the state on December 12, 1986. FEMA conducted a second exercise of the plan in June 1988 and issued its report on September 2, 1988.

FEMA'S INITIAL POSITION

In December 1985, after reviewing New Hampshire's plan, the RAC Chairman raised concerns about the state's ability to protect the large population that visits the beaches around Seabrook each summer. As a result of this concern, the RAC Chairman asked the members to provide their views on the state's treatment of the beach population in the emergency plan. By February 1987, a majority of the RAC had responded and concluded that the state adequately addressed options to protect the beach population. In its response supporting this position, NRC pointed out that Seabrook's double containment system would allow more than the 30 minute planning time described in NUREG-0654 and concluded that the plan generally met the joint NRC/FEMA emergency planning criteria. At its April 1987 meeting, the RAC--including FEMA--adopted NRC's position.

Following the meeting, NRC informed FEMA that NRC was withdrawing its response and expected to provide another that would omit the discussion of Seabrook's containment features. NRC reached this decision after its Office of General Counsel concluded that FEMA was not required to consider plant-specific features when considering an emergency plan. NRC submitted its revised position to the RAC Chairman on June 4, 1987, the day FEMA submitted a statement of position to the ASLB on the adequacy of the New Hampshire plan. FEMA concluded that, until the issue of protecting the beach population was resolved, it could not find the plan adequate. FEMA reiterated this position in testimony filed with the ASLB in September 1987.

FACTORS LEADING TO THE CHANGE IN FEMA'S POSITION

FEMA's final position with regard to the beach population was presented in testimony before the ASLB on June 10, 1988. In that testimony, FEMA stated that the requirement for a range of protective measures for the beach population had been met through recent information provided by the state. According to FEMA officials, a number of programmatic, technical, and legal factors influenced them to change their position on the adequacy of the New Hampshire emergency plan. Each of these are discussed below.

Programmatic Factors

At four RAC meetings in 1987 and 1988, a majority of the members believed that the New Hampshire plan provided a range of options to protect the beach population. The FEMA RAC Chairman disagreed with the other members. As a result, FEMA headquarters officials, who had supported the position that the plan did not adequately address a range of protective measures, began to reexamine this position and requested additional information from the state on the possible use of sheltering as a protective action.

In September 1987, the state provided FEMA with a survey of shelters near the New Hampshire beaches and asked FEMA for assistance to evaluate the results. The state, however, had not had time to incorporate the information into its plan before FEMA filed testimony with the ASLB in September 1987. As a result, FEMA did not incorporate this information in its testimony. FEMA subsequently pointed out this omission in supplemental testimony filed with the ASLB on January 25, 1988. Shortly thereafter, the state provided FEMA information showing that the buildings at the beach would provide little protection to the public in the event of an accident. As a result, the state concluded that immediate evacuation, rather than sheltering, would be the primary protective measure because it would provide greater radiation dose savings.

Technical Factors

Shortly after receiving the results of the survey of beach shelters from the state, FEMA requested the Department of Energy's Idaho National Engineering Laboratory (INEL) to perform a technical analysis of FEMA's position on the adequacy of the plan to protect the beach population. INEL provided FEMA information showing that under most accident scenarios a greater dose savings resulted from immediate evacuation rather than sheltering the population.

The INEL consultant explained that the dose savings would occur because the plume resulting from a radiological release consists of two parts: the cloud shine and ground shine. The cloud shine has a short half-life and consists of small, light, airborne radioactive particles. The cloud shine moves away from the accident and is dispersed with the wind. Conversely, the ground shine consists of heavier radioactive particles with a longer half-life that tend to settle to the ground near the point of release. The consultant found that the ground shine would be the greatest contributor to the radioactive dose that would result from exposure to the plume. He reasoned that, if the population is sheltered at the beach, they will be in buildings that the shelter survey showed would provide little protection. In addition, the sheltered population would eventually have to be evacuated and would be exposed to the ground shine that had accumulated. The consultant concluded that the advantage of evacuation is that the beach population would be moving away from the plume's path and would generally receive a lesser radiation dose than if they took shelter near the beach.

Legal Factors

Between June 1987 and June 1988, several legal questions that affected FEMA's review of, and position on, the New Hampshire plan were resolved. These questions pertained to FEMA's emergency planning regulations, an interpretation of NRC's emergency planning regulations, and the roles of the two agencies in emergency planning for nuclear power plants. Each of these are discussed below.

FEMA's Emergency Planning Regulations

FEMA's RAC Chairman asked FEMA headquarters officials to clarify the agency's position on the meaning of the term "reasonable assurance" as used in FEMA's emergency planning regulations (44 CFR 350.5(b)). The RAC Chairman believed that FEMA had some discretion to find a plan inadequate even if it meets all emergency planning standards and criteria contained in NUREG-0654 and 44 CFR 350.5(a). After some internal debate, FEMA determined that if a plan meets the standards and criteria, FEMA must make a positive finding; that is, reasonable assurance exists that appropriate protective measures can be taken to protect the public in the event of a radiological emergency.

Another closely related issue that the RAC Chairman asked FEMA headquarters to clarify was whether a plan must achieve some preset dose savings or evacuation time in order to be found adequate. The Chairman believed that this question was particularly relevant because the estimated evacuation times in the New Hampshire plan were high. FEMA ultimately concluded that no minimum dose savings, and consequently no minimum evacuation time estimates, must be achieved by an emergency plan for the plan to be found adequate.

A series of events led FEMA to reach this conclusion. According to FEMA officials, the events included (1) a July 1986 NRC ruling for the Shoreham nuclear power plant, which stated that an emergency plan need not achieve a minimum dose savings, (2) the ASLB's rejection of testimony proposed by the Massachusetts Attorney General that focused on evacuation time estimates, and (3) new rules published by NRC on November 3, 1987, which state that a plan need not achieve a predetermined dose savings or evacuation time estimate.

Clarification of NRC Regulations

In addition, FEMA sought clarification from NRC on the proper interpretation of its emergency planning regulations. Specifically, FEMA wanted to know if NRC's emergency planning regulations required that a plan contain provisions for sheltering the population in the event of an accident. This issue became increasingly important to FEMA headquarters officials as the limited usefulness of sheltering as a protective measure for the beach population became apparent. In a February 1988 letter, NRC's Office of General Counsel informed FEMA that the lack of provisions for sheltering all parts of the population within the emergency planning zone did not conflict with NRC's emergency planning regulations.

Role of the Two Agencies

The final legal factor concerned the responsibilities of FEMA and NRC to determine an acceptable risk to the public from the operation of a nuclear power plant. Specifically, the FEMA RAC Chairman, after the other issues associated with the FEMA review of the New Hampshire plan had been resolved, personally believed that the risk to the beach population was too great. The general consensus among FEMA headquarters officials was that the risk was not too great, the determination of risk is NRC's responsibility, and FEMA's findings on the adequacy of a plan is but one factor considered by NRC to determine risk.

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In summary, the record in this matter demonstrates that various programmatic, technical, and legal factors caused FEMA to determine that the New Hampshire plan met FEMA's emergency planning regulations for the beach population. Initially, FEMA determined that the plan did not provide a range of measures to shelter the beach population in the event of an accident. Subsequently, FEMA concluded that immediate evacuation, rather than sheltering, would be the primary protective measure for the beach population because evacuation would result in greater radiation dose savings from an accident. The record also shows that FEMA reached this determination on the basis of its own deliberations and information provided by an outside consultant, the state, and NRC.

If you have any questions or would like to discuss this matter further, please contact me on 275-1441, or Ms. Mary Ann Kruslicky, Assistant Director, on 353-5711.

Sincerely yours,

Keith O. Fultz

Keith O. Fultz
Director, Energy Issues

[Whereupon, at 6:09 p.m., the hearing was adjourned.]

[Prepared questions submitted to Victor Stello, Jr. by Senator Nunn prior to the hearing with answers supplied follow:]

DEPARTMENT OF ENERGY,
Washington, DC, November 13, 1989.

Hon. SAM NUNN,
Chairman, Committee on Armed Services,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter dated November 6, 1989, indicating that you have scheduled a hearing on my nomination to serve as the Assistant Secretary of Energy for Defense Programs. I am pleased to have been nominated to this important and challenging position by President Bush. I am also grateful that with the very busy schedule of your Committee that you have managed to find the time to consider my nomination.

Your letter also requested answers to questions on what are very clearly important policy issues critical to the Department of Energy's Defense Programs. While I have not had the opportunity to study fully the areas identified in great detail, I have provided you with the answers to these questions based on my current understanding of these issues. If confirmed, I want to assure you that the philosophy, policies, and management concepts embodied within my answers will be faithfully executed to the best of my ability.

I look forward to the opportunity to testify before your Committee and to have the opportunity to explain further the important issues you have raised.

Sincerely,

VICTOR STELLO, Jr.,
Nominee for the Assistant Secretary of Energy for Defense Programs.

Enclosure: Responses to Prehearing Questions.

MANAGING FOR SAFETY

Question (1). What are the three most important steps that you believe should be taken today to begin to foster the right safety culture within the Department of Energy, and will such steps give you confidence in the continued operation of the Savannah River reactors and other key Department of Energy defense facilities?

Answer: A high level of performance that assures safety and environmental compliance with a goal of operational excellence needs to be the fundamental policy for management of the various facilities within the Department of Energy. A change in management emphasis will be needed in order to have a reasonable expectation of achieving this goal. As Secretary Watkins has pointed out previously, there has been an emphasis on production at the DOE without equal concern for health, safety, and the environment. In part, I believe this has been a result of the emphasis of DOE line management to achieve production goals while relinquishing concern for safety and environmental compliance to those oversight functions. Recent directives from the Secretary of Energy have now made it clear that this is no longer tolerable. I believe the three most important steps to foster the right safety culture are:

A. A comprehensive system to critically evaluate the safety and environmental compliance of each facility within the weapons complex is necessary. A well-defined set of standards and requirements applicable to the facility, a well-structured, defined inspection program to monitor the facility on a continuous basis, reports that will systematically assess facility performance, and a competent cadre of DOE employees to fulfill these mission elements are required.

B. A revision of the DOE orders, standards, and directives is needed. Particular emphasis is urgently needed relating to the conduct of operations, maintenance of facilities, and development of appropriate design criteria, including a process for evaluating the need to backfit existing facilities to comply with these new criteria. These changes need to include clear mandates and guidance to the contractors who manage the day-to-day activities as well as the DOE management of our oversight responsibilities.

C. Development of a department-wide training program is needed. This training program needs to include elements to enhance the fundamental knowledge and skills of DOE employees assigned responsibilities for safety reviews, design evaluation, and inspection responsibilities for DOE facilities. Training in inspection methods necessary for the day-to-day monitoring of facilities should be included in the training program. The training program is a fundamental element necessary to facilitate change in the DOE safety culture. The Secretary has announced his intention to implement such a training program.

With respect to the Savannah River reactors, a comprehensive program for upgrading the safety of these reactors has already begun. Appropriate management systems have been put in place to assure that this program is faithfully implemented. Training of DOE employees has begun in connection with the Savannah River reactor restart program, inspection plans for monitoring day-to-day operations are under development, and resident inspectors have been assigned to each of the reactors. If confirmed, I would begin implementation of similar programs at all defense facilities.

OPERATING STANDARDS

Question (2). How will you ensure that the operational safety practices and procedures for the Department of Energy defense facilities meet or exceed those of commercial facilities? How would you assure Congress that such standards are being met?

Answer. Obviously, the first step in the process is to set forth operational safety directives and procedures which will be designed to achieve operational excellence. The guidelines for the conduct of operations used by the Institute for Nuclear Power Operations would be a starting point, as well as a number of the standards used by the Nuclear Regulatory Commission. My experience indicates that those policies and procedures related to facility management and human performance are the most important and would deserve particular emphasis. The Under Secretary, in a memorandum dated November 2, 1989, has requested that each contractor initiate a program to develop a set of guidelines for the conduct of operations.

Assuming that the program outlined in response to Question 1 is implemented, periodic reports to assess the performance of each of the facilities should be generated and if done properly, will define for the Department and Congress the extent to which these safety practices and policies are being implemented. Senior Department management attention will then be focused on those areas of performance that need improvement. In summary, if confirmed, it would be my intent to develop, similar to the system in place at the Nuclear Regulatory Commission today, a list of facilities which need additional DOE and contractor efforts in order to achieve improvement in their safety performance.

RELATIONSHIP BETWEEN DEPARTMENT OF ENERGY INTERNAL OVERSIGHT AND DEFENSE PROGRAMS

Question (3). In your review, what is the proper relationship between the Department of Energy's internal safety oversight organization that reports to the Assistant Secretary for Environment, Safety, and Health and to the Assistant Secretary for Nuclear Energy, and the operating organization under the Assistant Secretary for Defense Programs?

Answer. The Secretary of Energy, in a notice dated September 28, 1989, established the responsibility and authority for the Assistant Secretary for Environment, Safety and Health (EH) to develop departmental policy in those areas which do not deal with nuclear safety matters. The Assistant Secretary for Nuclear Energy (NE) is assigned the responsibility and authority to develop departmental policy for nuclear safety matters. Each operating organization under the Assistant Secretary for Defense Programs (DP) is required to develop the detailed implementing standards and guidelines which, when implemented by the contractor, will ensure compliance with departmental policy.

The oversight organization within EH will be responsible for conducting assessments in its assigned non-nuclear safety areas, as has been done over the last several years. In the area of nuclear safety, the operating line organization will be subject to the independent oversight of the Defense Nuclear Facilities Safety Board (DNFSB) as well as independent monitoring by the Secretary's Office of Nuclear Safety.

The Secretary of Energy also established an Office of Nuclear Safety (NS) reporting directly to the Secretary. This office was established to advise the Secretary if line management and the self-assessment functions within NE, DP and the Office of New Production Reactors are adequate.

An independent Defense Nuclear Facilities Safety Board was established by law last year and will also audit and make recommendations to assure that public health and safety are adequately protected. Members on this Board were confirmed by the Senate on October 18, 1989, and have already begun their review of DOE facilities while at the same time they are establishing their new organization.

In order to assure the Assistant Secretary for Nuclear Energy, the Assistant Secretary for Defense Programs, and the Director of the Office of New Production Reactors that nuclear safety is being properly addressed within their respective operating line organizations, the Secretary of Energy also established within each of the three program offices separate offices called Nuclear Self-Assessment Offices. These offices are independent of the programmatic line management, and will audit on a sample basis the nuclear safety performance of the programmatic line management. The Office of Nuclear Self-Assessment within Defense Programs will maintain close liaison with its parallel office in NE to maintain an awareness of safety issues at NE facilities which may have relevance to Defense Programs.

Consequently, oversight of the DOE will be comprised of both internal and external entities. To assure an effective oversight process, I will direct both the operating line organization and the self-assessment staff to maintain open communications with the oversight groups and to fully cooperate with and support their assessments.

SAFETY PHILOSOPHY

Question (4). How can a safety philosophy be meaningfully defined and implemented for the Department of Energy's defense facilities? What concrete steps would you take to develop and implement a uniform safety policy for the Department of Energy's defense facilities?

Answer. I believe it is necessary to instill within Defense Programs a strong safety ethic. Employees in any organization take their cues from senior management and therefore it is necessary to provide to all DP employees and contractors my views that make it clear that safety is the highest priority goal in the department. Secretary Watkins has already established his intention to instill this philosophy. It is therefore important that these views be reinforced on a regular basis in the day to day operation of the Office of Defense Programs. As an additional measure, senior managers with experience in commercial operations will be part of the management team in Defense Programs and would help to reinforce these concepts. Steps as described in the answers to questions 1 and 2 will be taken to implement our safety policies.

MANAGEMENT

Question (5). The review by the Advisory Committee on Nuclear Facility Safety of the restart strategy for the Savannah River reactors stated that the Department of Energy needs to maintain a clearer distinction between management and oversight and that "management directions should be transmitted along a single, clearly identified line." In you opinion, what changes should be made in the Department of Energy's management and organizational structure to strengthen the responsibility and accountability of the Department of Energy's line management? Would such changes include restructuring the relationship between Department of Energy headquarters and the field offices and between the Department of Energy and its contractors? In your view, do contractors have too much control over the Department of Energy's national security operations? If so, what corrective action is needed?

Answer. The organizational structure prior to Secretary Watkins represented a difficult management structure in which to instill a sense of accountability and responsibility. There was considerable confusion as to who was really responsible for safety and environmental compliance and similar confusion concerning the relationship between the field office and headquarters. Steps have been taken to change this management arrangement so that a clear line management function exists for certain programs. For example, the Secretary has directed that the Savannah River operations office report directly to the Assistant Secretary of Defense Programs. In addition, separate organizations also reporting directly to the Assistant Secretary were created at Savannah River and at DOE headquarters, in order to provide appropriate review of the restart program for Savannah River reactors. Under this arrangement, there is no question that the Assistant Secretary has the clear authority and responsibility for directing that program. In that context, the Secretary has indicated that he will be involved in deciding when and if these reactors can be safely restarted and is holding the Assistant Secretary accountable and responsible for that activity. This is as it should be. It will be necessary to make further changes with respect to the reporting structure of other field offices to assure that clear lines of management, responsibility, and accountability exists for all DOE programs.

Achieving the objective, as outlined above, will assure a proper balance and relationship between the contractors, as the operator of the facility, and the DOE as the owner. In my view, I have seen in the past where contractors have had far too much control and isolation from the DOE. The line management function, together with the oversight responsibility identified in response to questions 1 and 3, in my view, will provide the needed corrective action.

Also, a major focus of Secretary Watkins' first 8 months at the DOE has been to direct the restructuring of the award fee system to make it a truly effective management tool and to instill accountability and responsibility.

CLEANUP PRIORITIES

Question (6). What are the three most important steps you believe the Department of Energy should initiate today to address the problem of environmental contamination at Department of Energy facilities?

Answer. The three most important steps to addressing the problem of environmental contamination at DOE facilities are: (1) a strong management program which assures strict environmental compliance that will reduce to the extent possible any further environmental contamination; (2) implementation of Secretary Watkins' recently announced 5-year plan for the cleanup and restoration; and (3) to assure that the design of new facilities eliminate, to the extent possible, a potential for environmental contamination.

MODERNIZATION

Question (7). What, in your opinion, is the single most important modernization initiative for the nuclear weapons complex today? Do you support the findings and conclusions of the Modernization Study required by the Fiscal Year 1988 Defense Authorization Act? Please indicate any conclusions which you do not support.

Answer. The Modernization Study, as transmitted to Congress on January 12, 1989, is being restudied. The Secretary of Energy established a review committee for this on September 29, 1989. The Secretary stated that the previous study did not adequately address some of the problems in environmental and waste issues, and he was not satisfied with some of the assumptions used in the study. I agree with that view.

Irrespective of the modernization study conclusions, I believe the single most important issue within the nuclear weapons complex is to complete the ongoing safety reviews and upgrades at the Savannah River site reactors. It is essential that needed improvements necessary to allow safe restart of the reactors are identified and implemented.

BUDGET PRIORITIES

Question (8). What, in your opinion, are the three most important funding priorities for the nuclear weapons complex?

Answer. In my opinion, the three most important funding priorities in the nuclear weapons complex are to be directed toward facility safety and environmental compliance, weapons safety and meeting national security requirements with respect to the weapons stockpile.

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Question (9). How do you expect the recently established Defense Nuclear Facilities Safety Board to affect operations at Department of Energy defense facilities?

Answer. It is my understanding that the Board will conduct a thorough and detailed review of selected defense program facilities. I expect that they will begin with a review of the Savannah River reactor restart effort.

In my view, I have a great amount of respect for the qualifications and expertise of the Board members and believe the results of their critical reviews would be very useful. An independent review by individuals of the caliber of the Board will raise questions and provide valuable input for improving overall safety of Defense Program facilities. It will be necessary, in my view, for the Defense Nuclear Facilities Safety Board to have copies of reports assessing facility performance, inspection reports, incident data, and various safety documents. Furthermore, I believe requesting review of issues by the Board should become routine. The goal should be to have the line management reviews and the technical justification for the Department position on issues be such that the Board confirms the adequacy of these reviews. In summary, it is important to establish a level of technical competence within line management so that reliance on the Board to identify problems and/or solutions is not necessary. I believe if programs identified in response to question 1 are implemented, this goal can be achieved. In addition, a relationship of full and genuine cooperation with the Board must be established at the outset.

NEW PRODUCTION REACTOR

Question (10). Do you support the findings and conclusions of the Acquisition Strategy for New Production Reactors as described in the report of August 1988? Please indicate any conclusions you do not support.

Answer. I fully support the Acquisition Strategy for the building of two plants including the strategy of diverse reactor technologies. My limited observation indicates to me that the nuclear weapons complex is in many cases a fragile, single thread that has become even more tenuous with the shutdown of the production reactors at Savannah River. Based on the age and history of the Savannah River reactors, predictions of satisfactory performance for the long term are uncertain. I am convinced of the urgent need to design and construct at least two new production reactors preferably of different designs. However, as I have previously stated, I believe the highest priority facing the Department today is the safe restart of the Savannah River production reactors. The final decisions regarding the new production reactors will be made when the Environmental Impact Statement as required by the National Environmental Policy Act is completed. This is expected in late 1991.

BALANCING RESPONSIBILITIES

Question (11). What, in your view, is the proper relationship between production operations at the Department of Energy defense facilities, safety of operations, and environmental requirements?

Answer. It is my view that the proper balancing and prioritizing within the Defense Programs facilities ought to be judged on the basis of implementing the management of the programs consistent with the following list of priorities. I believe this list should be used as guidance for budget formulation, philosophy of management, and conduct of operations:

A. Assurance of public and worker health, safety, and environmental compliance.

B. Weapons safety.

C. Safeguards and security of facilities.

D. Meeting national security requirements with respect to maintenance and improvements to our Nation's nuclear weapons stockpile.

E. Modernization of the weapons facility complex.

CONFLICTS BETWEEN NATIONAL SECURITY MISSION AND ENVIRONMENTAL REQUIREMENTS

Question (12). Do you believe conflicts exist between compliance with environmental laws and regulations and continued operation of Department of Energy defense facilities? If so, what approach would you take to resolve such conflicts?

Answer. The Department's poor performance over the past many years has indeed created conflicts between continued operation of our Nation's facilities and compliance with environmental laws and regulations. There are in place numerous agreements that will take a number of years to implement to bring these facilities into environmental compliance. The most important step for the near term is to assure that further conflicts are not generated. If the steps I have outlined in the response to Question 6 above are followed, I believe this will result in a program which, with time, will resolve the conflicts that exist today.

It is my strongly held view, however, that these programs need not and should not occur. Such conflicts would not arise at facilities where the emphasis on safety and environmental compliance is a strong part of the facility management. Based on the experience I have had in the commercial nuclear industry, the operation and production of the facilities will be enhanced by the proper management attention to safety and environmental compliance.

[Questions for the record with answers supplied follow:]

QUESTIONS SUBMITTED BY SENATOR J. JAMES EXON

FORTUNA

Senator EXON. Who made the decision that Ben Hayes should not be the recommending official for Mr. Fortuna? Who has the authority under NRC rules and procedures to make this decision?

Mr. STELLO. This decision was made by Mr. Hugh Thompson and when informed of this decision, I did not object. According to the NRC rules, procedures, and practices, anyone from the first line supervisor and up the management chain can be the recommending official, and a management official other than the recommending official can be designated as the deciding official. Whenever a personnel disagreement occurs, any manager in a position senior to the person who is alleged of not following NRC rules or procedures can appoint himself to assume the role of recommending official. Such a recommending official would be a more senior manager in the chain of command.

Enclosure 3 to the letter dated December 27, 1989, to Senator Nunn provides additional information on the review of Mr. Fortuna's actions.

Senator EXON. Given that the use of a consulting contract to obtain information from an informant was highly unusual and permitted only under very specific and limited circumstances, why did you not seek a legal opinion in writing from the NRC's General Counsel before deciding that you had authority to enter into such an arrangement?

Mr. STELLO. This issue was discussed at a meeting with the General Counsel and he indicated that I had the authority to enter into such a contract. I was satisfied with the information provided me orally, and I did not feel the need to have the answer provided in a written memorandum.

Senator EXON. What were the technical qualifications of your aide, James Blaha, that you assigned to work with Sharon Connelly in obtaining information from Douglas Ellison? Was it a conflict of interest to assign one of your staff to work on an internal investigation of an agency employee, Roger Fortuna?

Mr. STELLO. I chose Mr. Blaha to work with Mrs. Connelly because at the time he was between assignments and was familiar with the NRC's contractual and financial processes. Mr. Blaha also was familiar with handling of agency safety issues and allegations and therefore could provide me with information that surfaced which had potential safety significance.

I felt this was an ideal arrangement because I was familiar with the safety issues at Nine Mile Point because I was the project manager for the facility at the time of the license review. As the project manager, I was responsible for the review, the preparation of the license, and the facility technical specifications and, therefore, felt perfectly comfortable to assess any technical information which might arise regarding this facility.

With regard to the matter of a conflict of interest to have one of the NRC staff members work on an internal investigation of another agency employee, the short answer is it is not a conflict of interest. Similar arrangements, that is having staff members work on investigations, had occurred previously. I should point out, however, that in this particular investigation, Mr. Blaha's responsibility was to glean from the allegations the safety information for my review, rather than participate in the actual investigation relating to the agency employee.

Senator EXON. As the Executive Director for Operations, did you ask Mrs. Connelly to report to you on the Fortuna investigation? Were you briefed regularly on this investigation? Have you ever requested Mrs. Connelly to report to you on any other ongoing personnel investigation? If so, please identify the number, type, and reasons for so doing. Why would Mrs. Connelly, as Director of OIA, report to you on a personnel matter rather than the Commissioners?

Mr. STELLO. I did not request Mrs. Connelly to keep me informed of the details of this or any other investigation regarding potential wrongdoing of NRC employees. I did, however, request that Mr. Blaha inform me of any safety information which surfaced from the investigation. This he did.

Mrs. Connelly and I met about once a month to obtain status of various on-going investigations which she felt I should be aware of. Examples of the type of information discussed at those meetings were investigations of various NRC employees where the particular interest on my behalf would be to assure that the assignment and potential reassignments of individuals, especially those in sensitive positions, is justified. In these meetings, the schedule for investigation completion and major milestones would be discussed. In this vein, I was informed of the major developments regarding the Fortuna investigation; i.e., referral to the FBI, the DOJ, and attempts to interview Mr. Fortuna. Conversely, I would inform Mrs. Connelly of potential reassignments I was planning in order to learn if there were any pending investigations that I should be aware of before I made any final decisions.

From time to time, the request for an investigation by Mrs. Connelly was made by the staff and as such, the reports on the results of these investigations would be provided directly to the responsible staff office for disposition.

Senator EXON. You have testified that you did not pursue the allegations made by informant Ellison in September 1988 of drug use by nuclear plant workers for 7 months after learning about them because you did not want to compromise the internal investigation of Roger Fortuna, which was also based on information supplied by informant Ellison. How can you reconcile this with the statement you have made that your "overriding concern was to assure public health and safety?" Did you consider confidentiality of the case more important than safety issues?

Mr. STELLO. The safety issues that were identified during the investigation of allegations were, with one exception, involved with the facility, or systems and components of the facility. The one exception was related to persons alleged to have used drugs. It was my decision that *all* of the issues would be resolved prior to permitting restart of the facility. As I have indicated previously, I expected that when we entered into the contract with Ellison that the restart of the plant could have been sometime in the fall of 1988. I was hopeful that the entire investigation would have been completed prior to turning the information over to our inspectors for resolution. With the passage of time, the restart schedule continued to slip, and I was comfortable that we would have sufficient time to finish the investigation without the need to compromise it. I did not consider continued confidentiality of the case to be more important than the safety issues, and I would have assured that the safety issues would be resolved prior to restart.

In retrospect, as I have testified before Congressman Kostmayer hearings, it would have been better from a safety point of view to have pursued the drug allegation more promptly. The reason, of course, was that Unit-2, which was operating, may have used individuals involved in drug use or these individuals could have been performing safety functions on Unit-1. From that perspective it would have been preferable to resolve that issue more promptly. I should point out, however, that aside from the specific allegations, we were continuing to stress to all of our licensees the importance of being responsive to a comprehensive drug program and considerable progress was being made to upgrade the fitness for duty program at all facilities (including Nine Mile Point).

I should note in closing that these allegations regarding drug use and the other safety issues that were substantiated have been resolved at the Nine Mile Point facility and the facility still is not yet in operation. I think that is an important point since my original objective to assure that these issues would be resolved prior to operation have now been fulfilled.

RESTART OF NINE MILE POINT

Senator EXON. You testified that on July 25, 1988, you had a conversation with a reporter, the tape recording of which indicates that the Nine Mile Point utility told you in July that they projected restart of the reactor in the October 1988 time frame. You presented this as evidence of your state of mind in July about reactor restart. Congressman Kostmayer has cited documents to show that 1) after August 1988, not July, restart was not expected in the foreseeable future; and 2) there was no reported change in the restart status of the plant between September 1 (when you signed the contract to pay Ellison based on a belief that restart was imminent) and September 16 (when Ellison's allegations were received by the NRC). How does the evidence of the July 25 tape recording alter Congressman Kostmayer's claims? Do you know of any other evidence that would support the assertion that you believed, after July 1988, that restart of the Nine Mile Point reactor was imminent?

Mr. STELLO. To respond to the thrust of these questions it's necessary to provide a brief background on the issue. When I responded to Senator Glenn on April 14, 1989, I indicated ". . . . Nine Mile Point Unit 1 had been shut down since December 1987 but was projected to start up again in the fall of 1988. For that reason, I felt it was important to promptly pursue these allegations; therefore, I approved the contract." Congressman Kostmayer, during a hearing on October 12, 1989, cited four documents which he indicated provided evidence to show restart was not expected for a long time; that is, beyond the fall of 1988.

The initial projected startup for the Nine Mile Point Unit 1 facility as was discussed at our management meeting in June of 1988, was in the July–August time frame. Following that meeting, I concluded that I would personally visit the plant to discuss some of the issues raised at the management meeting with the utility management as well as plant operators. Following that meeting with the utility on July 25, 1988, I was interviewed by a reporter and I indicated that the plant would probably not be ready for startup until the October time frame and at that time our inspectors believed that time frame was possible. As described below, there were no developments in August or early September which would alter the projected startup date as discussed at my meeting on July 25, 1988, and presented during the interview.

I think it is important to discuss each of the documents that Congressman Kostmayer referred to during his testimony before the Senate Armed Services Committee. It was on the basis of these documents that he suggested that I misled Congress because I knew the restart would be much later than the fall of 1988. Taking these documents one at a time:

1. An Inside NRC publication dated July 18, 1988,[1] was one of the references. This document reports on our briefing to the Commission regarding the results of our June 1988 management meeting. It also contains the following:

"The unit hoped to restart in mid-August, according to Niagara Mohawk spokesman Bill Romano. During the next several weeks the utility will develop a comprehensive plan to address NRC concerns, Romano said. Currently there is no target date for restart."

I note that this document is dated prior to my July 25, 1988, meeting with Niagara Mohawk referred to above.

2. An NRC document dated August 5, 1988, which is titled, "Daily Staff Notes August 4, 1988." This document contains a table which indicates the restart was September 1, 1988.

3. A Nucleonics Week publication dated August 25, 1988.[1] The article says the unit "might remain out of service until the end of 1988, according to an official of Niagara Mohawk Power Corp. 'It's possible that the plant will be back on line before the end of the year, but it could be sooner and it could be longer,' said spokesman Robert Burtch."

4. An NRC document dated August 31, 1988, entitled, "Daily Staff Notes August 30, 1988." This document indicates that the Nine Mile Point Unit 1 restart date is unknown. This statement would be consistent with the fact that the utility had not announced a startup date, but this did not suggest that planning for a fall startup was not continuing.

I do not find any of these documents inconsistent with my statement that the plant would probably start up some time in the fall of 1988.

There are two additional documents dated August 5 (Status Report Number 1) and August 31, 1988, (Status Report Number 2) that were not cited at the hearing that I believe are relevant to these issues. While neither of these documents gives a startup date, the August 31 report indicates that "the earliest that core reload could begin would be October 1, 1988." As a general practice, reactor restart would normally follow about one month after reload of the reactor which could still be within the fall time frame I originally stated as my belief. As time progressed, the startup continued to be deferred further and further into the future.

Additionally, a document dated October 6, 1988, which is a summary of a public meeting with the licensee, that occurred on September 21, 1988, contains an overall schedule for the restart with an NRC restart team inspection projected for November which would suggest a projected restart the following month in December.

I would finally conclude that my understanding of the startup schedule of the facility can be independently confirmed by Mr. William Russell, who was with me at the meeting with the licensees on July 25. Mr. Russell as our Region I Administrator, was responsible for the Nine Mile Point Unit 1 facility. I urge the Committee to contact Mr. Russell who has detailed knowledge regarding the Nine Mile Point facility restart schedule.

Copies of all of these documents are attached.

[Information referred to follows:]

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DATE: Dec. 28, 1989

PLEASE FAX TO: Don Knuth, DOE
586-1567

FROM: Margaret Ryan, Chief Editor, Nucleonics Week
Washington DC
Phone: 202-463-1652
Fax: 202-463-1610 or 1611

This is page 1 of __1__ pages.

You are hereby given permission to reproduce two articles, related to Nine Mile Point-1 restart, from Nucleonics Week, August 25, 1988 issue, and Inside N.R.C., July 18, 1988 issue. This permission is given with the understanding that:

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Yours truly,

Margaret Ryan

Margaret L. Ryan

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Nuclear Power Operations. However, two senior reactor operator candidates failed the NRC examination, although they, too, completed an INPO-accredited course. Those failures, NRC said, "are considered a result of a marginal initial licensing program which is in transition." The report concluded, however, that, given the low number of personnel errors, "significant improvements" have been made in Yankee's training program over the last 11 months of the assessment period.

SOME NRC CONCERNS PUNCTUATE GOOD SALP RATINGS FOR FARLEY

NRC's latest SALP report for Alabama Power Co.'s Farley said the facility had an "excellent long-term operating record" and was "well-managed." The report, however, said there were several areas of concern that "require management attention." In addition, NRC said, "a common problem of failure to follow procedures was noted" throughout the SALP period, August 1, 1986 through March 31, 1988.

According to Nucleonics Week, Farley-1, an 873-MW Westinghouse PWR, had a gross capacity factor in 1987 of 88.98%. Though May 1988, the unit's capacity factor was 59.13%. Farley-2, an 872-MW Westinghouse PWR, had a gross capacity factor in 1987 of 67.99%; through May 1988, its capacity factor was 100.56%.

In the area of radiological controls, NRC noted that the 1987 cumulative radiation exposure was 299 person-rem per unit, below the national average of 368 person-rem per unit.

NRC had some criticisms of Alabama Power's performance in the areas of quality programs and engineering support. For instance, NRC said, "Repetitive failures in procurement control were evidenced by deficiencies in the procurement of safety-related components and in the dedication of commercial-grade components for safety-related applications."

NINE MILE POINT-1, FORT CALHOUN ADDED TO PROBLEM PLANT LIST

Niagara Mohawk Power Corp.'s Nine Mile Point-1 jumped close to the top of NRC's list of problem plants when staff announced July 13 that it will issue a confirmatory action letter requiring the utility to win NRC permission before restarting the 17-year-old BWR. William Kane, Region I director of reactor projects, told the commission in a July 13 briefing that lack of management involvement and the inability of the utility to diagnose and correct problems prompted the decision to issue the letter and to generally increase oversight of the unit.

Nine Mile Point-1 went down in December because of problems with auxiliary feedwater, returned briefly to service, and then entered a refueling outage in January. The unit hoped to restart in mid-August, according to Niagara Mohawk spokesman Bill Romano. During the next several weeks the utility will develop a comprehensive plan to address NRC concerns, Romano said. Currently there is no target date for restart. "It's not really a surprise," he said of NRC's decision to issue a confirmatory action letter. "We are in agreement with NRC. They're not pleased and we're not pleased."

The other new unit on the problem plant list is Omaha Public Power District's Fort Calhoun, which NRC acknowledged has an outstanding operating record in terms of plant availability. "The concerns...have to do primarily not with the operating performance," said Region IV Administrator Robert Martin. "The issues that have concerned us are the depth of their ability to withstand challenges (and) their engineering strength." Martin said staff concerns stemmed directly from a special team inspection focusing on design changes and review.

Omaha President and Chief Executive Officer Fred M. Petersen, in a statement issued in response to NRC's action, said: "The NRC announcement was not unexpected. We have acknowledged that we have had problems in the past (and) have initiated exhaustive efforts to correct all deficiencies....We are pleased that the NRC staff, in reporting these problems, acknowledged the superior operating record of the plant. We believe that Fort Calhoun station, with its record of operating efficiency and safety, is one of the best nuclear plants in the United States."

Taken off the list was Public Service Co. of Colorado's Fort St. Vrain. The list now includes 16 reactors at 11 stations. In addition to Nine Mile Point-1, seven reactors at four stations are shut and require NRC reauthorization to restart: Philadelphia Electric Co.'s Peach Bottom-2 and -3; Boston Edison Co.'s Pilgrim; and the Tennessee Valley Authority's Browns Ferry-1, -2, and -3 and Sequoyah-1.

NRC's second category of problem plants includes those units authorized to operate that NRC "will monitor closely." That category includes eight reactors at six sites: TVA's Sequoyah-2; Florida Power & Light Co.'s Turkey Point-3 and -4; Commonwealth Edison Co.'s Dresden-2 and -3; Detroit Edison Co.'s Fermi; and Sacramento Municipal Utility District's Rancho Seco. Staff noted that Sequoyah-2 and Rancho Seco were automatically shifted into this category after winning NRC permission to restart.

Staffers said problems at Nine Mile Point-1 were evident in the recent systematic assessment of

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licensee performance (SALP). In a letter to the utility, Region I Administrator William Russell voiced concern over the nuclear staff's "inability to aggressively and consistently seek out and correct both technical and management problems before they become regulatory concerns."

During the assessment period from November 1986 to February 1988, according to the report, there existed "an overall complacency toward the quality of station operations." In particular, radiological controls and chemistry programs suffered from "inadequate oversight and a general lack of adherence" to accepted practices, noted NRC. That category was rated to be in a "declining trend."

A root cause of performance problems are the divisions between plant staffers and tension between the site engineering groups and the corporate engineering staff, said NRC. While the operators of unit 1, which fell one day short of tying the world record for a continuous run of a BWR last year (Nucleonics Week, 22 Oct. '87, 1) "possess pride," noted the report, "this sense of pride does not appear to extend beyond the operations department with respect to a spirit of cooperation and teamwork with other departments." In a similar vein, "strained relationships" exist between the operations and training departments, said NRC, and the operations department feels "a lack of responsibility" for housekeeping problems at the station.

Relations between site engineers and their corporate counterparts "are sometimes openly antagonistic," according to the SALP, and the licensing department has exhibited "a reluctance to make independent, conservative decisions on issues regarding regulatory compliance."

—Brian Jordan, Washington; Marc Sperber, New York

PETITION ON PSNH'S FINANCIAL QUALIFICATION IS SENT TO COMMISSION

A petition filed by the Massachusetts attorney general asking NRC to waive a 1984 generic finding and examine the financial qualification of Seabrook's main owner, Public Service Co. of New Hampshire (PSNH), has been certified by an Atomic Safety & Licensing Appeal Board and sent to the commissioners for consideration. Should the commissioners accept the petition and grant a waiver, Massachusetts would be permitted to file a new contention, guaranteeing that the litigation over Seabrook—which had its 15th anniversary on July 8—will drag on.

The petition filed by Attorney General James Shannon asks NRC to put aside its generic finding that did away with the requirement upon utilities to prove financial qualification prior to receiving an operating license. He asked the agency to conduct an examination of the PSNH's resources before allowing low-power operations to commence. The embattled utility, which has sunk more than $2-billion—roughly 70% of its assets—into Seabrook, entered bankruptcy proceedings in January (INRC, 1 Feb., 9).

Shannon's brief, filed in March, said low-power testing of the 1,150-MW plant would require PSNH to add $3.6-million over three months to its Seabrook maintenance bill of $10-million per month and cause the utility's insurance bill to rise by $2.8-million. He noted that the U.S. Bankruptcy Court in Manchester, N.H., which is overseeing PSNH's financial reorganization, might not allow any monies to be expended for low-power testing because of the uncertainties surrounding a full-power license. In addition, Shannon said, there is no guarantee that Seabrook's 10 other owners will pick up PSNH's share of payments should the utility be unwilling or unable to continue its funding. Seabrook was completed in 1986, but the refusal of Massachusetts authorities to participate in emergency planning has stymied licensing proceedings.

Since Shannon's brief was filed, the fourth-largest owner of Seabrook, the Massachusetts Municipal Wholesale Electric Co. (MMWEC) has ceased making its monthly upkeep payments and has put its share of the project up for sale (Nucleonics Week, 16 June, 14). But in a move which may augur greater solidarity among Seabrook's joint owners—and weaken Shannon's arguments—Northeast Utilities, owner of 4% of Seabrook through its Connecticut Light & Power Co. subsidiary, agreed July 13 to assume MMWEC's share of plant upkeep costs through September.

In 1982, NRC dropped its financial qualification requirement, stating that state-level economic regulation would assure utilities adequate resources for completion of nuclear projects and basic revenue requirements. The New England Coalition on Nuclear Pollution, an intervenor in the Seabrook case, brought suit, and in 1984 the U.S. Court of Appeals for the District of Columbia Circuit ordered NRC to reconsider its position. The commission upheld its policy later that year during licensing proceedings on Pennsylvania Power & Light Co.'s Susquehanna-2 (INRC, 28 May '84, 5). The validity of NRC's action was upheld in court in 1986.

Stephen Oleskey, Shannon's deputy, called the decision of the appeals board a victory. "When NRC passed the generic finding, the commissioners said it could be waived in special circumstances," he said. "We filed a blizzard of paper showing that this is exactly that sort of a situation where a waiver is appropriate, and the board agreed with our position." Should the commission refuse the petition and

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outside power.

The SMUD board still has to comply with a referendum passed in June that calls for an effort to sell Rancho Seco. However, a brighter financial picture could prompt a serious look at meeting that obligation by only selling part of Rancho Seco or by issuing contracts to operate the plant, a utility spokesman said.

SMUD has not started formal negotiations with Quadrex Corp., which last month formally submitted a two-phase proposal on operating and buying Rancho Seco (NW, 4 Aug., 2). The California utility also has not yet resumed formal talks with Duke Power Co., which is interested in operating but not owning Rancho Seco.

O'Connor told the board his report will also look at such questions as who would hold the plant license, who would be responsible for making premium payments under Price-Anderson, and what role the elected SMUD board should play in the day-to-day plant operations.
—Elaine Hiruo, Washington

NINE MILE POINT-1 COULD REMAIN OUT OF SERVICE UNTIL YEAR'S END

Nine Mile Point-1, near the top of NRC's list of problem plants and forbidden to restart without commission clearance, might remain out of service until the end of 1988, according to an official of Niagara Mohawk Power Corp.

"It's possible that the plant will be back on line before the end of the year, but it could be sooner and it could be longer," said spokesman Robert Burtch. "At this point, we are trying not to lock ourselves into a schedule." The 640-MW BWR went down last December because of problems with a feedwater control valve (NW, 24 Dec. '87, 15), made a brief return to service, and then entered a refueling outage in January.

The unit has been plagued with "an overall complacency toward the quality of station operations," according to NRC's latest systematic assessment of licensee performance (SALP). NRC Region I Administrator William Russell, in formally forbidding restart, emphasized his concern over management oversight and quality assurance programs. He said the utility must tell NRC whether the current line management "has the appropriate leadership and management skills to prevent, or detect and correct, future problems."

On July 27, Niagara Mohawk announced the replacement of unit 1's station superintendent and site maintenance superintendent. Burtch declined to characterize the changes as a shake-up. "These changes reflect some concerns NRC had, but they are not a direct response," he said.

A unit 1 restart task force chaired by James Perry, the utility's vice president of quality assurance, is overseeing the effort to collect and document the information required by NRC. "The task force will insure that we've identified root causes, developed solutions, and have a consensus among our people," said Burtch.

Nine Mile Point-2, a 1,165-MW BWR that entered commercial service in March, is at full power. Niagara Mohawk is buying replacement power to cover the loss of unit 1 at a cost estimated at $250,000 to $300,000 per day. Shortly after NRC's list of problem plants was published, the New York Public Service Commission indicated it might bring the issues raised by NRC into its ongoing investigation of Niagara Mohawk's prudency in fuel purchasing (NW, 28 July, 9).*—Marc Sperber, New York*

FINAL ORDER BARS 6% OF HARRIS FROM RATE BASES IN CAROLINAS

The final public rate case involving construction costs for Carolina Power & Light Co.'s (CP&L) Shearon-Harris has resulted in disallowance of a total of 2% of the plant's $3.9-billion cost. Decisions made in August by commissions in North and South Carolina will also force the utility to amortize an additional 4% of the plant's cost associated with common facilities constructed for three canceled reactors at the Harris site.

On August 16, the South Carolina Public Service Commission (SCPSC) issued the final public rate order for Harris and found no imprudency in construction, said a commission spokesman. CP&L's rate request was designed to recover $216-million in Harris costs, a utility spokesman said, but the SCPSC voted against $56.2-million in construction costs associated with common facilities for Harris-2, -3, and -4 from entering the rate base.

The SCPSC labelled excessive $449-million, or 11% of total construction costs, because they were for the common facilities, the commission spokesman said. CP&L's South Carolina share of that amount is $56.2-million, which CP&L will be permitted to treat as abandoned plant costs and amortize the amount over Harris' projected 38.66-year life, he said. The SCPSC has jurisdiction over 15% of CP&L's portion of Harris; CP&L is responsible for 83.3% of Harris' costs.

The commission's decision, which becomes effective August 31, brings to a close the final rate case involving Harris construction costs. Earlier this month, the North Carolina Utilities Commission, disallowed $77.5-million in construction costs as imprudent and forced the utility to amortize $98.3-million in common facilities costs over 10 years (NW, 11 Aug., 2). Both commissions also approved inclusion of some Harris costs in the rate base last year. CP&L has not said whether it will appeal either state's rate order.*—Gary Baker, New York*

ETEC DEDICATES NEW TEST BED FOR THREE LMR STEAM GENERATOR DESIGNS

The Energy Technology Engineering Center (ETEC) on August 16 dedicated a new facility to provide long-term endurance testing of liquid metal reactor (LMR) steam generators.

The new "Power Pak" cogeneration facility will eventually supply 24 megawatts to the Southern California Edison Co. (SCE) grid from steam generated by the existing Sodium Component Test Installation (SCTI). Three different LMR steam generators will be subjected to a variety of tests over a 10-year period, according to Wil-

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

August 5, 1988

MEMORANDUM FOR: Chairman Zech
Commissioner Roberts
Commissioner Carr
Commissioner Rogers

FROM: Victor Stello, Jr.
Executive Director for Operations

SUBJECT: DAILY STAFF NOTES, AUGUST 4, 1988

OE

1. Significant Enforcement Actions

A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of $100,000 was issued on August 3, 1988 to Alabama Power Company (Farley Units 1 and 2). The action was based on the failure to determine system operability of the high level safety injection system (HHSI) upon evidence of a design deficiency. The base civil penalty was increased 100% because of the licensee's failure to act on the available information concerning the gas generation and the duration of the existing condition in which other opportunities occurred that should have led the licensee to recognize the problem. (EN 88-64)

Region IV

1. As of 8:00 a.m. (CDT) this morning, South Texas Project, Unit 1 (STP-1), had completed 44 hours of operation at 100 percent power as part of a 100-hour NSSS Acceptance Test. Houston Lighting & Power Company (HL&P) anticipates completing this NSSS Acceptance Test at 4:00 p.m. (CDT) on Sunday, August 7, 1988. HL&P will then perform the remaining 100 percent power plateau startup testing, which includes steam generator moisture carry-over measurement and a large load reduction test. After review of the 100 percent power plateau test results by the licensee's Plant Operations Review Committee, STP-1 will have completed its startup test program and be at a point to begin commercial operation.

South Texas Project, Unit 2 (STP-2) is presently conducting hot functional testing. STP-2 has been at normal operating temperature and pressure since 7:00 p.m. (CDT) on August 2, 1988. HL&P anticipates completing hot functional testing on STP-2 by September 15, 1988.

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NRC OPERATIONS CENTER
PLANT STATUS REPORT FOR 08/06/88
UNEVALUATED INFORMATION PROVIDED BY THE FACILITY

REG	PLANT NAME	PHONE	%PWR	DOWN	RESTART	REASON OR COMMENT	*	#
1	BEAVER VALLEY 1	2201	100					
1	BEAVER VALLEY 2	2201	100					
1	CALVERT CLIFFS 1	2202	100					
1	CALVERT CLIFFS 2	2202	100					
1	FITZPATRICK	2203	084			LOW CONDENSER VACUUM DUE TO HIGH LAKE TEMPERATURE		
1	GINNA	2204	100					
1	HADDAM NECK	2205	100					
1	HOPE CREEK 1	2206	100					
1	INDIAN POINT 2	2207	066			HOLDING POWER	*	
1	INDIAN POINT 3	2208	100					
1	LIMERICK 1	2209	087			POWER LIMITED DUE TO LEAKING GE BARRIER FUEL ROD		
1	MAINE YANKEE	2210	099					
1	MILLSTONE 1	2211	090			BACKWASHING CONDENSER	*	
1	MILLSTONE 2	2211	100					
1	MILLSTONE 3	2211	100					
1	NINE MILE POINT 1	2213	000	12/87	08/01	COND 5 - REFUELING REFUELING OUTAGE DEFUELED		
1	NINE MILE POINT 2	2213	100					
1	OYSTER CREEK	2215	000	07/09	08/06	COND 4 - COLD S/D MAINTENANCE OUTAGE REPAIRING #3A MSIV		
1	PEACH BOTTOM 2	2216	000	03/87	UNK	COND 4 - COLD S/D MAINTENANCE OUTAGE. NRC ORDER		
1	PEACH BOTTOM 3	2216	000	03/87	UNK	COND 5 - REFUELING REFUELING OUTAGE DEFUELED NRC ORDER		
1	PILGRIM 1	2217	000	04/86	09/19	COND 4 - COLD S/D MAINTENANCE OUTAGE		
1	SALEM 1	2218	100					
1	SALEM 2	2218	091			COASTDOWN TO REFUEL		

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,------------------- Event Notification - Power Facilities -------------------
                            Event Number : 13095
Facility : NINE (Nine Mile Point                         )  Event Date : 08/03/88
Region   : 1           State: New York                           Time : 23:45 EDT)
Unit     : 2 (GE )   (   )  (   )                        Notify Date : 08/04/88
Docket   : 05000410                                              Time : 01:04  ET)
License Type : Power Reactor                             Caller : TOWNSEND
Emergency: NOT                                 Ops Officer : 08 Bill Reckley
Not Applicable                                 Ops Officer :
Report Required By:                          Notified : RDO    HAVERKAMP
AESF 50.72(b)(2)(ii) ESF Actuation


NO REACTOR TRIP
Reactor    Prior                              Prior Current                   Curren
Critical   Mode                                PWR  Mode                        PWR
   Y       81 Power operation                  82  81 Power Operation           82
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WITH RCIC ISOLATED AND INOPERABLE (SEE EVENT 13079), WATER CONDENSED IN THE INSIDE CONTAINMENT LEG OF THE RCIC STEAM LINE. THIS DEVELOPED A DELTA-P ACROSS THE LOWER FLOW ELBOW TAP AND RESULTED IN A DIVISION 2 RCIC ISOLATION SIGNAL. DRYWELL PARAMETERS WERE VERIFIED TO BE NORMAL AND STABLE AFTER THE ISOLATION SIGNAL. THE STEAM LINE HAS BEEN DRAINED VIA THE MAIN STEAM DRAIN SYSTEM, THE TRIP UNITS RETURNED TO NORMAL, AND THE ISOLATION SIGNAL RESET. TWO VALVES (2ICS*MOV128, 2ICS*MOV170) WERE PREVIOUSLY SHUT IN PREPARATION FOR RETURNING RCIC TO SERVICE BUT WOULD HAVE AUTOMATICALLY ISOLATED IF NOT ALREADY SHUT. CORRECTIVE ACTIONS INCLUDE PROCEDURE REVISIONS TO INCLUDE PERIODIC DRAINING OF THE STEAM LINE WHEN RCIC IS ISOLATED DURING POWER OPERATION. LICENSEE INFORMED RI.

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.------------------- Event Notification - Power Facilities -------------------
                            Event Number : 13096
Facility : BYRO (Byron                                   )  Event Date : 08/04/88
Region   : 3           State: Illinois                           Time : 00:47 CDT)
Unit     : 1 (WE )   (   )  (   )                        Notify Date : 08/04/88
Docket   : 05000454                                              Time : 02:18  ET)
License Type : Power Reactor                             Caller : BENDIS
Emergency: NOT                                 Ops Officer : 08 Bill Reckley
Not Applicable                                 Ops Officer :
Report Required By:                          Notified : RDO    PHILLIPS
ARPS 50.72(b)(2)(ii) RPS Actuation
```

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

August 31, 1988

MEMORANDUM FOR: Chairman Zech
Commissioner Roberts
Commissioner Carr
Commissioner Rogers

FROM: Victor Stello, Jr.
Executive Director for Operations

SUBJECT: DAILY STAFF NOTES, AUGUST 30, 1988

Region III

1. Illinois Power Company has notified Region III that four locals of the International Brotherhood of Electrical Workers voted to accept a new three year contract. Most non-management employees (except for the security force and some maintenance personnel) at the Clinton Nuclear Power Station are represented by the union. The vote, which was tallied on August 29, 1988, averts a threatened strike at Illinois Power facilities, including Clinton. (Reference PNO-III-88-68 and 68A)

2. Region III issued a Confirmatory Action Letter to Detroit Edison Company on August 30, 1988, confirming the utility's agreement to investigate the failure of a discharge valve in the recirculation system at Fermi 2 which occurred during testing on August 20 and again on August 28, 1988. The plant will not start up without the concurrence of the Regional Administrator. (Reference PNO-II-88-76)

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NRC OPERATIONS CENTER
PLANT STATUS REPORT FOR 08/31/88
UNEVALUATED INFORMATION PROVIDED BY THE FACILITY

REG	PLANT NAME	PHONE	%PWR	DOWN	RESTART	REASON OR COMMENT
1	BEAVER VALLEY 1	2201	100			
1	BEAVER VALLEY 2	2201	100			
1	CALVERT CLIFFS 1	2202	100			
1	CALVERT CLIFFS 2	2202	100			
1	FITZPATRICK	2203	000	08/28	11/07	Mode 4 - Cold shutdown REFUEL OUTAGE.
1	GINNA	2204	100			
1	HADDAM NECK	2205	100			
1	HOPE CREEK 1	2206	100			
1	INDIAN POINT 2	2207	100			
1	INDIAN POINT 3	2208	100			
1	LIMERICK 1	2209	082			POWER LIMITED DUE TO TWO LEAKING FUEL RODS.
1	MAINE YANKEE	2210	001			Mode 2 - startup INCR POWER. LIMITED TO 66% DUE TO XFMR PROB.
1	MILLSTONE 1	2211	100			
1	MILLSTONE 2	2211	100			
1	MILLSTONE 3	2211	100			
1	NINE MILE POINT 1	2213	000	12/87	UNK	COND 5 - REFUELING REFUELING OUTAGE
1	NINE MILE POINT 2	2213	099			
1	OYSTER CREEK	2215	100			
1	PEACH BOTTOM 2	2216	000	03/87	UNK	COND 4 - COLD S/D MAINTENANCE OUTAGE NRC ORDER

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406

05 AUG 1988

MEMORANDUM FOR: Jon R. Johnson, Chief, Projects Section 1C, DRP

From: Wayne L. Schmidt, Resident Inspector, NMP 1/2

SUBJECT: STATUS REPORT NUMBER 1 - NINE MILE POINT 1

1. **Plant Status:**

The unit has been shutdown since a December 19, 1987 manual scram resulting from a feedwater system transient. In October 1987, deficiencies in the licensee's ISI program were identified by the NRC. Discrepancies known to exist during the 1986 refueling outage were not properly reconciled prior to the end of that outage. In January, 1988, during a review of records, the licensee determined that other inspections had been missed. To complete these inspections, the licensee decided to enter the 1988 refueling outage early.

An inspection of the licensee's licensed operator requalification program, conducted during January, 1988, revealed discrepancies in their requalification training program. Also, in June an EOP team inspection was conducted to determine the useability of the Unit 1 EOPs. The results of this inspection showed that the operators lacked knowledge of the EOPs and their use.

In March, the licensee discovered that numerous safety related fire barrier penetrations were not properly sealed. Further inspection by the NRC revealed an apparent violation of Appendix R; specifically, that the plant might be unable to achieve hot shutdown in the event of a control room fire.

2. **Items of Special Interest:**

On January 7, an Enforcement Conference was held to discuss the ISI deficiencies. A Notice of Violation and a $100,000 civil penalty was issued on March 14. The violation was based on the licensee's failure to followup on known problems (ISI deficiency reports) resulting in emergency systems being in a questionable status while the plant was returned to operation following a refueling outage.

Confirmatory Action Letter (CAL) 88-13 was issued in March to formalize the licensee actions to correct the problems identified with the requalification program for licensed operators.

On May 4, Region I issued a letter to the licensee requesting a meeting to discuss items that needed to be resolved prior to plant restart.

A meeting was held on June 20, to discuss the licensee's plans and progress towards restart.

An Enforcement Conference was held on July 11, to discuss fire barrier penetrations and the licensee's method of complying with Appendix R. Enforcement Action is currently being reviewed.

Nine Mile Point Unit 1 was discussed at the June 28, senior managers meeting and at the July 13 Commissioners meeting as a plant that warranted closer NRC attention and monitoring. The licensee's commitments to perform a self assessment in order to determine root causes of identified problems, to submit and receive approval of a restart plan, and to receive the approval of the Region I Regional Administrator prior to restart were confirmed in CAL 88-17.

On July 25, the EDO and the Region I Regional Administrator discussed performance problems and delivered CAL 88-17, to senior licensee management. After the management discussions, an open forum was held with site personnel to discuss actions taken by the NRC in the CAL, and to hear the comments of the licensee's operations staff.

On July 27, the licensee announced that management changes were being instituted effective August 1. These changes affected the positions of the Unit 1 superintendent, the maintenance superintendent and other supervisors.

A Restart Task Force has been formed by the licensee to be chaired by the corporate QA vice president. This group will act as a focal point in completing the actions required by CAL 88-17.

3. Activities Planned:

The licensee continues to pursue the ISI plan review and inspections. Review of systems required for fuel load is their first priority. Fire barrier inspections and rework continues.

A matrix of the root causes and problems is expected to be developed by the beginning of August. The licensee desires to present these [illegible] to Region I at a status meeting sometime in August. No schedule for submittal of the restart action plan or for plant restart has been issued.

4. Onsite NRC Coverage:

Routine resident inspector coverage. Three Region I inspections are in progress during the week of August 1: 1) the yearly EP drill and ERF appraisal, 2) a health physics inspection to followup on an ingestion of a radioactive particle, and 3) followup on Mark 1 containment modifications.

BEST AVAILABLE COPY

5. Cumulative Summary of Significant Events:

11/10/87	ISI program violations identified (IR 87-21).
12/19/87	Feedwater transient requiring the shutdown of the plant.
1/7/88	ISI Enforcement Conference
1/14/88	Special Team Inspection to review Feedwater transient (IR 88-02).
1/15/88	Outage extended to provide sufficient time to correct newly identified ISI issues.
1/22/88	Refueling outage begins early.
1/24/88	Stop Work Order issued to prevent use of undedicated commercial grade components.
2/25/88	Discrepancies noted in operator requalification program (IR 88-05).
3/14/88	Severity Level III Violation with CP issued for ISI problems.
3/23/88	CAL 88-13, Maintenance of Operator Licenses, is issued.
3/26/88	Fire barrier penetrations found by licensee not to be properly sealed.
4/6/88	Several systems declared inoperable due to improper dedication of commercial grade parts.
4/22/88	Missed (ISI) hydrostatic test on electromatic relief valve piping identified.
4/26/88	Meeting in Region I to discuss torus thinning and ISI corrective action plans
5/4/88	Meeting in Region I to discuss licensee approach to issues needing resolution prior to plant restart.
5/12/88	Licensee identifies discripancies with reactor vessel sample material and emergency battery motor generator set classification.
6/7/88	Apparent Violation of Appendix R safe shutdown requirements (IR 88-15).
6/20/88	Restart issues meeting in Region I.
6/29/88	NRC Senior Management Meeting - Nine Mile Point Unit 1 discussed.
7/11/88	Enforcement Conference on Appendix R violation.
7/13/88	NRC Commissioners briefing on operating reactors.
7/25/88	EDO and Regional Administrator visit and meetings on site. CAL 88-17 delivered.
7/27/88	Licensee announces management changes.
7/28/88	Restart Task Force charter and members announced (Attached).

Wayne L. Schmidt, Resident Inspector
Nine Mile Point 1/2

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406

31 AUG 1988

MEMORANDUM FOR: Jon R. Johnson, Chief, Projects Section [illegible]C, DRP

From: Wayne L. Schmidt, Resident Inspector, NMP 1/2

SUBJECT: STATUS REPORT NUMBER 2 - NINE MILE POINT 1

1. Plant Status:

The unit remains in cold shutdown with the core offloaded. The Inservice inspection program, which is the critical path to fuel load, is on hold. On [illegible], the licensee's Quality Assurance Manager issued a Stop Work order to the ISI program contractor Nuclear Engineering Service, (NES) due to failure to provide adequate quality control over the current inspection program.

2. Items of Special Interest:

On August 18, the Region I Regional Administrator was on site for a plant tour and meeting with the general superintendent and his staff. At the meeting the licensee presented portions of their plan for making improvements in site operations. A review was also held at the licensee's nuclear headquarters with senior corporate officials to discuss the methodology used in preparing the required response to the July 25, 1988 Confirmatory Action Letter (CAL).

The management changes discussed previously have taken place. The inspector reviewed the qualifications of the general superintendent and the Unit 1 superintendent against the requirements of ANSI N18.1-1971 to have knowledge level of a Senior Reactor Operator. Neither of the individuals possess the required experience or knowledge. The standard allows a principle alternate to be assigned who meets the SRO requirement. This matter was discussed with the Senior Vice President, who committed to formally designating the Unit 1 operations superintendent, who currently holds an SRO license, as the alternate for both individuals. He also committed to develop a long term plan to get the two individuals training so that the use of a principle alternate would no longer be necessary.

Letters from the New York State, Department of Law (dated June 2, June 14, June 28, August 5, and August 19, 1988) to the licensee have been reviewed. In these letters the state asks for information dealing with NRC inspection findings and enforcement actions. The letters were reviewed to ensure that they contained no allegations or new items which required NRC followup.

3. **Activities Planned:**

The licensee believes that, even if the Stop Work Order was lifted, the earliest that core reload could begin would be October 1. NMPC is currently preparing a plan, that will require licensee approval, to recommence the inspection program. Fire barrier inspections and rework continue.

The licensee desires to present their view of problems and root causes to Region I at a status meeting sometime in early September. No schedule for submittal of the restart action plan or plant restart has been issued.

4. **Onsite NRC Coverage:**

Routine resident inspector coverage: One Region I inspection was conducted during the week of August 22 on the yearly review of liquid and gaseous effluents. Two members of the planned Headquarters Safety System Functional Inspection (SSFI) were on site the week of August 22 to gather information. The SSFI is scheduled for the last two weeks in September and the second week of October. Vendor Inspection Branch inspectors were on site 8/23/88 to gather information regarding licensee use of "counterfeit" circuit breakers.

5. **Cumulative Summary of Significant Events:**

7/11/88	Enforcement Conference on Appendix R violation.
7/13/88	NRC Commissioners briefing on operating reactors.
7/25/88	EDO and Regional Administrator visit and meetings on site. CAL 88-17 delivered.
7/27/88	Licensee announces management changes.
7/28/88	Restart Task Force charter and members announced.
8/1/88	New Unit 1 station superintendent (K. Dahlberg) takes over.
8/16/88	Licensee issues Stop Work Order to ISI contractor ([illegible]).
8/18/88	Regional Administrator meets with licensee personnel on site and senior corporate officials to discuss corrective actions.

for Wayne L. Schmidt, Resident Inspector
Nine Mile Point 1/2

B. Clayton
EDO

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406

06 OCT 1988

Docket No. 50-220

Niagara Mohawk Power Corporation
ATTN: Charles V. Mangan
Senior Vice President - Nuclear
301 Plainfield Road
Syracuse, New York 13212

Gentlemen:

Subject: Meeting Report

On September 21, 1988, a meeting was held in the NRC Region I office in King of Prussia, PA with you and your staff to discuss your progress in resolving Nine Mile Point Unit 1 restart issues. The meeting was held at your request and was constructive in providing us with a status of your efforts and in giving you our perspective on resolution of the various restart concerns.

A summary of the meeting is attached to this letter including a copy of your prepared agenda and discussion outline. We look forward to additional discussions with you and your staff regarding the identification of problems and their relationship to restart action plans.

We appreciate your cooperation in this matter.

Sincerely,

Paul D Swetland
for Edward C. Wenzinger, Chief
Projects Branch No. 2
Division of Reactor Projects

Enclosures:
1. Meeting Summary
2. Licensee Meeting Handout

cc w/encl:
J. M. Endries, President
Connor & Wetterhahn
John W. Keib, Esquire
T. Perkins, Vice President, Nuclear Generation
J. Willis, General Superintendent
K. Dahlberg, Unit 1 Superintendent
R. Abbott, Unit 2 Superintendent
R. Randall, Unit 1 Superintendent of Operations
R. Smith, Unit 2 Superintendent of Operations
D. Palmer, Acting Vice President, Quality Assurance
C. Beckham, Manager Nuclear Quality Assurance Operations
W. Hansen, Manager Corporate Quality Assurance
Troy B. Conner, Jr., Esquire
J. Perry, NMP1 Restart Task Force Manager
Director, Power Division
Department of Public Service, State of New York
New York State, Department of Law
Public Document Room (PDR)
Local Public Document Room (LPDR)
Nuclear Safety Information Center (NSIC)
NRC Resident Inspector
State of New York

bcc w/encl:
Region I Docket Room (with concurrences)
Management Assistant, DRMA (w/o encls)
J. Johnson, Section Chief, DRP
M. Haughey, Licensing Project Manager, Unit 1 and 2
State Liaison Officer (SLO)
B. Clayton, EDO, Region I Coordinator
R. Capra, NRR

ENCLOSURE 1

MEETING SUMMARY

I. Purpose:

On September 21, 1988, Senior Niagara Mohawk Power Corporation representatives, at their request, met with NRC personnel at the Region I office in King of Prussia, PA, to discuss the status of the Nine Mile Point Unit 1 restart efforts.

II. Attendees:

Niagara Mohawk Power Corporation:

J. M. Endries, President
C. V. Mangan, Senior Vice President, Nuclear
J. A. Perry, Director, NMP 1 Restart Task Force
S. W. Wilczek, Manager Nuclear Technology
R. B. Burtch, Director, Nuclear Information Services

NRC:

W. Kane, Director, DRP
R. Capra, Director, Project Director I-1, NRR
S. Ebneter, Director, DRSS
T. Martin, Director, DRS
W. Johnston, Deputy Director, DRS
E. Wenzinger, Chief, Branch 2, DRP
J. Johnson, Chief, Projects Section 2C, DRP
D. Lange, Chief, BWR Section, DRS
R. Gallo, Chief, Operations Branch, DRS
M. Haughey, Project Manager, NRR
W. Cook, SRI, Nine Mile Point 1 & 2
J. Durr, Chief, Engineering Branch, DRS
J. Strosnider, Chief, Materials and Processes Section, DRS
R. McBrearty, Reactor Engineer, DRS
H. Kerch, Senior Reactor Engineer, DRS
T. Walker, Senior Operation Engineer, DRS
B. Clayton, Regional Coordinator, OEDO

New York State Public Service Commission

J. Roberts, Director, Staff Evaluation of NMP-1 Extended Outage

III. Discussion

Introductory remarks were made by Mr. Kane, NRC and followed by Mr. Wenzinger and Mr. Johnson who gave summaries of the plant events and assessments and actions taken by the NRC leading to the issuance of Confirmatory Action Letter 88-17 on July 24, 1988. Mr. Kane subsequently outlined the NRC's evaluation process which will be used by the staff to make their recommendation to the Regional Administrator for authorization of Unit 1 restart. The evaluation process was outlined to include:

1. A review of the licensee's definition of the Unit 1 restart issues/concerns and problems.

2. A review and assessment of the licensee's development of the root cause(s) of these restart issues/concerns.

3. The NRC staff's agreement with the licensee's root cause(s) and respective solutions, including both the scope and timeliness of the implementation of these solutions (Restart Action Plan).

4. NRC staff inspection/verification of proper implementation of the licensee's Restart Action Plan.

The meeting was then turned over to the licensee for their presentation of Restart Action Plan status. Mr. Endries provided an overview of Niagara Mohawk's efforts and actions to address overall management effectiveness. Messrs. J. Perry, C. Mangan and S. Wilczek proceeded with their presentation as outlined in the agenda and handout attached to this report.

Following the licensee's presentation, the NRC staff concluded that, although a generally acceptable overall approach to unit restart was evident, more specific information and documentation was required by the NRC staff to evaluate whether or not the licensee had adequately assessed the underlying problems at the facility. The NRC staff communicated this conclusion to the licensee and reiterated action item No. 1 of CAL 88-17. The licensee acknowledged their understanding of what was expected of them and further indicated that they believed they had the specific information requested by the NRC, but were not presently prepared to provide that information in an adequate format.

The meeting was adjourned with the understanding that the licensee would initiate another meeting in the near future to present their specific evaluation of Unit 1 restart issues/concerns and problems.

ENCLOSURE 2

NIAGARA MOHAWK/NRC MANAGEMENT MEETING
AT
KING OF PRUSSIA, PA.

SEPTEMBER 21, 1988

AGENDA

1. Introduction
2. Summary of Actions Taken Since Receipt of CAL 88-17
3. Describe Intended Structure of Restart Action Plan
4. Technical Status of Restart Issues
5. Discussion of Root Causes
6. Discussion of Schedule Leading to Plant Restart
7. Discuss Overview of Long Range Improvement Program
8. Summary of Restart Effort
9. Discussion/Questions

EFFECTIVE MANAGEMENT

1. Niagara Mohawk's Senior Management is determined to provide the required economic and human resources to improve management effectiveness.

2. Chairman/CEO and President are participating directly in managing the restart effort. Nuclear Oversight Committee of the Board of Directors is providing close review and oversight.

3. Commitment to high standards of performance is reflected in the Nuclear Division's mission statements and challenging goals.

4. Management strength of the Nuclear Division has been increased by selective rotation and assignment of experienced managers with demonstrated leadership ability to key positions:

   - General Superintendent
   - Unit #1 Station Superintendent
   - Unit #1 Operations Superintendent
   - Managers of: I&C, Health Physics, Licensing, and Training

5. A recently commissioned human resources task force has recommended improvements in informational and interactive communications. Niagara Mohawk has launched programs and activities to upgrade communications, including:

   - A business dinner meeting with nuclear personnel and spouses, in April 1988.
   - Corporate-wide "People to People" Meetings in April and May 1988.
   - A series of meetings between Senior Management and nuclear employees to review 1988 SALP report and emphasize management expectations.
   - Establishment of over a dozen "Quality Circle" type teams within the Nuclear Division.
   - Two-day interactive communications course for 700 nuclear employees
   - Special interactive communications program for senior management and selected direct reports.
   - Quarterly Nuclear Division staff meetings with the president.
   - Internal nuclear information staff increased from one to three members; division-specific communications plans being developed.

6. Niagara Mohawk is applying improved management effectiveness and communications methods in developing and implementing the Restart Action Plan; these improvements will be continued in the long term.

KEY EVENTS SINCE RECEIPT OF CAL 88-17

• Senior Mangement direction, oversight & control	Since early July 1988
• Received NRC confirmatory action letter	7/25/88
• Issued Charter for Restart Task Force	7/27/88
• Established membership of Restart Task Force	7/27/88
• Commenced meetings of Restart Task Force	7/27/88
• Developed restart strategy	8/7/88
• Identified restart issues	8/15/88
• Senior Management met with NRC Region 1 Administrator	8/18/88
• Senior Management met with President & Vice President of INPO	8/18/88
• Issued first draft of Restart Action Plan for review	8/30/88
• Conducted intensive review, correlation tests, detail analysis and refinement of Restart Action Plan material involving responsible managers and Task Force representatives interacting.	9/6-9/12/88
• Issued second draft of Restart Action Plan for review	9/14/88
• Senior Nuclear Division Managers meet to discuss and resolve comments on second draft of Restart Action Plan	9/20/88

NINE MILE ONE RESTART TASK FORCE CHARTER & MEMBERSHIP

Purpose: Provide for development, coordination, and implementation of Nine Mile One Restart effort in direct response to Confirmatory Action Letter 88-17.

Objectives

- Facilitate line management buy-in and involvement where line management defines root causes, action plans, and carries out implementation.
- Effectively respond to CAL 88-17 by taking aggressive yet deliberate action that fully satisfies ourselves we have adequately addressed the issues, taken required action, documented results, verified the adequacy of completion of restart action items and can withstand an independent review.

NIAGARA MOHAWK EMPLOYEES

Name		Participation
J. A. Perry	Director of Restart Program	Full Time
B. D. Wolken	Representing CDT and NE&L Organization	Full Time
W. C. Drews	Representing JLW and Nucl..Gen. Organization	Full Time
C. L. Stuart	Representing Nuclear Division Projects	Part Time
N. L. Rademacher	Director of Compliance - NRC Interface	Part Time
R. B. Burtch	Director Nuclear Info. - Communications	Part Time
G. D. Wilson	System Law/Technical Review	Part Time
K. A. Dahlberg	Station Supt. NMP1 - Ops. Communications	Part Time
E. V. Kelliher	Director - Corporate Communications	Part Time
J. Kroehler	Representing Q.A. Department	Part Time

OUTSIDE CONSULTANTS

L. Burkhardt (MAC)	Part Time
P. Jimerson (MAC)	Part Time
M. A. Peifer (INPO)	Part Time
L. Kammerzell (IMS)	Part Time
D. Boyd (ASTA)	Part Time
A. J. Tudury (MAC)	Part Time
R. H. Vollmer (TENERA)	Part Time

RESTART ACTION PLAN WORK FLOW PROCESS

ISSUE IDENTIFICATION

- Review of documents
- Brainstorming sessions
- Identify restart issues vs. long term issues
- Assignment of single point accountability

CORRECTIVE ACTION PLANNING

- Root cause analysis
- Corrective action planning and scheduling
- Verification action development
- Composite management review process

IMPLEMENTATION

- Corrective action implementation
- Monitoring and control of actions

ASSESSMENT/CLOSE-OUT

- Validation that verification actions completed
- Complete close-out summary report
- SORC review and approval
- Senior Management review and approval of readiness for restart

RESTART ACTION PLAN/LRIP RELATIONSHIP

- Restart Action Plan addresses twelve specific restart issues, their root causes, and effective corrective actions to ensure Niagara Mohawk's readiness to safely restart and operate Nine Mile Point Unit 1.

- A Long Range Improvement Program (LRIP), an internal Niagara Mohawk document, is being developed to address the longer term aspects of the restart issues as well as other areas for comprehensive performance improvement.

NINE MILE POINT UNIT 1 RESTART ISSUES MATRIX

	Restart Issues Previously Identified	Addressed in Restart Action Plan as Issue No.
1.	Confirmatory Action Letter 88-13 on training	1
2.	Operator license training (NRC letter dated 3/22/88)	
3.	Inservice Inspection Program issues (Notice of Violation EA 87-224)	3
4.	Torus wall thinning (Inspection 88-09)	6
5.	Material control and commercial grade issues (NM Stop Work Orders 88-01, 88-02)	4
6.	Fire barrier penetrations (Inspection 88-15)	5
7.	Scram discharge volume issues (Inspection 88-24)	7
8.	Appendix J (10CFR50) issues (NM letter requests for resolution)	8
9.	Maintenance and modification status during outages (including a summary of repairs to the Feedwater System)	12
10.	Readiness for startup plan to ensure that all startup issues were addressed prior to startup	
11.	Errors in the Reactor Pressure Vessel pressure/temperatur curves (10CFR Part 21 notification)	9
12.	Erosion and corrosion program (Inspection Report 50-229)	10
13.	Modifications to the Motor Generator Sets 162 and 172 and associated battery chargers	11
14.	Emergency Operating Procedures (Ispection 88-22)	2

Nine Mile Point Unit 1 Restart Action Plan

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EXECUTIVE SUMMARY

INTRODUCTION

PART I - OVERVIEW

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2. Assessment of Root Causes
3. Summary of Root Causes by Category
4. Determination of Corrective Actions
5. Restart Action Plan Work Flow Process
6. Progress toward Effective Management
7. Summary and Conclusions

PART II - SPECIFIC ISSUES/ROOT CAUSES/ACTIONS BEFORE RESTART AND STRATEGIES AFTER RESTART

Issues 1 - 12

APPENDIX

A. Task Force Charter

TABLE 6

ISSUE 6. TORUS WALL THINNING

SUB-ELEMENT	ROOT CAUSE	CORRECTIVE ACTION	VERIFICATION ACTION
6.1 NRC concern that torus wall thickness may be approaching minimum allowable, per NRC measurements.	6.A Niagara Mohawk did not provide adequate management oversight including contacting cognizant personnel to resolve the NRC inspectors' concerns before they left the site.	6.A.1 Present information on torus wall thinning to NRC. Submit information discussed at meeting, including clarification of test frequency, in a letter to NRC.	6.A.1 Verify that meeting was held and that Niagara Mohawk letter was submitted to NRC containing technical justification for continued operation.
		6.A.2 Obtain NRC concurrence with the Niagara Mohawk position stated in letter.	6.A.2 Verify NRC Region I acceptance of the Niagara Mohawk position on torus wall thinning.
		6.A.3 Establish the Regulatory Compliance Group as the coordinator of NRC inspections at the site.	6.A.3 Verify the Regulatory Compliance group has been established and that responsibilities are documented and are being carried out.

STATUS OF RESTART ISSUES

Restart Issues	Technical Status of Restart Issues
1. • Confirmatory Action Letter 88-13 on training. • Operator license training (NRC letter dated 3/22/88).	• Progressing satisfactorily.
2. Emergency Operating Procedures (Inspection 88-22).	• Initial training completed. • Additional training was scheduled and completed. • Further training is being assessed.
3. Inservice Inspection Program issues (Notice of Violation EA-87-224).	• Submit exemption request for NRC approval. • 80% of inspections complete. • Critical systems complete by about November 7. • Estimate project closeout by about December 1.
4. Material control and commercial grade issues (NM Stop Work Orders 88-01, 88-02).	• Awaiting NRC response.
5. Fire barrier penetration.	• Physical work complete by mid-October. • Project closeout by end of October.
6. Torus wall thinning (Inspection 88-09).	• Awaiting NRC response.

STATUS OF RESTART ISSUES
(Continued)

Restart Issues	Technical Status of Restart Issues
7. Scram discharge volume issues (Inspection 88-24).	• Awaiting NRC response.
8. Appendix J (10CFR50) issues (HM letter requests for resolution).	• Awaiting NRC response. • Tech Spec submittal (non-startup).
9. Errors in the Reactor Pressure Vessel pressure/temperature curves (10CFR Part 21 notification).	• Closed out by NRC letter dated 9/14/88.
10. Erosion and corrosion program (Inspection Report 50-229).	• Awaiting NRC closure of grid item. • Three inspections remain. • To date: clean.
11. Modifications to the Motor Generator Sets 162 and 172 and associated battery chargers.	• Engineering review complete. • MG sets will be upgraded. • Past determination review complete; will be finalized by 9/30.
12. • Maintenance and modification status during outages (including a summary of repairs to the Feedwater System). • Readiness for startup plan to ensure that all startup issues were addressed prior to startup.	• Increased management oversight and attention is ongoing.

(2192M)

SPECIFIC RESTART ISSUES
SUMMARY OF ROOT CAUSES BY CATEGORY

Root Cause	Restart Issue Number											
Categories*	1	2	3	4	5	6	7	8	9	10	11	12
Procedures	X	X	X		X					X		
Communications		X	X		X	X						
Human Factors					X				X		X	
Training	X	X			X							
Management System	X	X	X	X	X	X	X	X			X	X
Immediate Supervision	X	X	X		X					X		
No. of Root Causes	4	5	4	1	11	1	1	1	1	3	2	1

NOTE: * Categories relate to causal elements per INPO's Human Performance Evaluation System & Users Guide for Reactor Incident Root Cause Coding Tree from DuPont's Savannah River Labs documents.

EXAMPLES OF ACTUAL ROOT CAUSES VS ROOT CAUSE CATEGORIES

Procedures

2.B
Lack of adequate policy describing the purpose, use, and importance of EOPS.

Training

5-H
Previous walkdown teams lack an indoctrination with the Unit 1 design data base.

Communications

3.A
Lack of timely or complete communications

Human Factors

9.A
Human error by Combustion Engineering or General Electric personnel who improperly identified the reactor vessel material coupon heat number in the original records when the records were first made-up in the mid-sixties.

Management System

7.A
Lack of adequate follow-up to obtain formal NRC concurrence of proposed alternate methods to satisfy regulatory requirements.

Immediate Supervision

3.C
Inadequate supervision regarding planning, execution and verification of work.

OVERALL SCHEDULE LEADING TO PLANT RESTART

• First draft Restart Action Plan issued		8/30/88
• NRC team inspection start (SSFI)		9/12/88
• Second draft Restart Action Plan issued		9/14/88
• Senior management resolution of Action Plan Comments		9/20/88
• Niagara Mohawk Information and Status Meeting with NRC on Restart Issues		9/21/88
• Third draft Restart Action Plan issued - INPO review		9/27/88
• Proposed briefing of NRC on Restart Action Plan		W/O 10/3/88
*• Submit Restart Action Plan to NRC		10/10/88
• Complete ISI on systems required for fuel load		11/7/88
• INPO assessment of restart readiness		TBD
• Start refuel reloading		TBD
• Complete self assessment and firm up report		TBD
• Proposed briefing of NRC on readiness for restart	[NOV]	TBD
• Complete fuel reloading and verification		TBD
• Start post-fuel load readiness activities		TBD
• Complete all remaining ISI items	[NOV]	TBD
**• Submit Readiness for Restart Report to NRC	[NOV]	TBD
• [redacted]		
• Receive NRC Region I Administrator authorization for restart per CAL 88-17		TBD

* To satisfy condition 1 and 2 of CAL 88-17
** To satisfy condition 3 of CAL 88-17

OVERVIEW OF LONG RANGE IMPROVEMENT PROGRAM

1. Niagara Mohawk is committed to developing a comprehensive Nuclear Division Long Range Improvement Program (LRIP)
2. Development of LRIP will proceed in parallel with Restart Action Plan
3. The LRIP basic structure will be defined when the readiness for restart report is issued.
4. LRIP will address long term strategy aspects of Restart Action Plan issues plus other identified issues from various internal/external sources.
5. LRIP will be an internal Niagara Mohawk document, available for NRC review and monitoring. (Not part of CAL 88-17).
6. LRIP will provide for specific measures of effectiveness, and controls to monitor and update as required, to achieve performance levels.
7. A principal thrust of LRIP will be improved management effectiveness and communications.
8. Improved management effectiveness and communications methods are being applied in developing and executing the Restart Action Plan.
9. Restart Action Plan will be a model for LRIP, and will demonstrate concrete and credible progress toward achieving LRIP goals.

SUMMARY OF RESTART EFFORT

1. Niagara Mohawk is taking aggressive, yet carefully considered action to address restart issues.

2. Restart Task Force has been formed to focus and coordinate Restart Action Plan (RAP) development, but responsibility for root cause determination and corrective actions, including implementation, rests with line management.

3. Twelve restart issues are addressed by the Restart Action Plan.

4. Restart Action Plan will be submitted to NRC by October 10, 1988, but corrective actions are already underway.

5. Readiness for Restart Report will be submitted to NRC when Niagara Mohawk Senior Management is confident that the actions being taken will enable us to safely restart and operate Nine Mile 1.

6. Niagara Mohawk will provide oral briefings to NRC prior to submission of Restart Action Plan and readiness for Restart Report.

THREE MILE ISLAND LEAK RATES

Senator EXON. You have testified that you did not become aware of the so-called Hartman allegations about leak rate falsification at TMI until March 1980, yet investigators in your office were aware of these allegations in mid-1979. Why were you not informed of them by your staff and learned of them only, according to your testimony, from a news report?

Mr. STELLO. My first recollection of the Hartman allegations was from reporter Ira Rosen who was raising the issue within the staff and, I believe, I spoke with Mr. Rosen regarding this matter. I have no recollection of being informed or briefed by the staff regarding the Hartman allegation prior to that time. (See response to Question 10. The FBI investigated this matter and, it is addressed in the FBI report which has been provided to the Committee.)

Senator EXON. On October 22, 1979, at a Commission meeting you were questioned by Commissioner Ahearne about whether there were any indications of criminal violations in any of the areas in which the staff was proposing civil penalties. You responded no. On October 26, 1979, as Director of Inspection and Enforcement, you issued a notice of violation to Metropolitan Edison (Met Ed), the utility that operated TMI Unit 2. Later on January 23, 1980, you signed an order imposing civil monetary penalties of $155,000 against Met Ed for regulatory violations at TMI Unit 2. Did these regulatory violations include failing leak rate tests?

Mr. STELLO. The regulatory violations cited in the enforcement action in proposing of a civil penalty that I signed on October 26, 1979, did include violations for failing the leak rate test. The violation was for exceeding allowed leak rate but was not based on falsification of any of the data, but rather from errors in the calculation that were found by the NRC inspectors. The civil penalty was calculated on the basis of the number of days that the allowable leak rate was exceeded based on NRC calculations, not the licensees. The penalty was for technical violations of the facility license and not criminal violations.

Senator EXON. You have responded on numerous occasions that you did not learn of the Hartman allegations until March 1980. Would it be correct to say that you did not know of the Hartman allegations including falsification of leak rates, but that you were aware of leak rate problems prior to March 1980?

Mr. STELLO. While I was not aware of the Hartman allegation, there were clear indications of leak rate problems prior to 1980. For example, NUREG 0600, titled Investigation into the March 28, 1979, Three Mile Island Accident by the Office of Inspection and Enforcement, Investigative Report No. 50-320/7010, dated August 1979, identified that the computer program for calculating leak rate was incorrect. I was also aware that there were high temperatures in the discharge pipe for the pressure relief valve which obviously was a result of some leakage through that valve. This latter issue, that is of high temperatures in the discharge pipe from the pressurizer relief valve, was the major thrust of our proposed civil penalty issued on October 26, 1979.

Senator EXON. When did you first become aware of leak rate problems at TMI Unit-2? When Commissioner Ahearne asked the question of possible criminality surrounding the regulatory violations, you responded no. In reality, allegations had already been made that leak rates had been "falsified." Tim Martin and other I&E investigators were aware of the possibility of criminal wrongdoing in May of 1979. You became Director of I&E in June 1979, and throughout 1979 when NRC was issuing civil penalties for violations including failed leak rate tests, why were you not advised by someone on your I&E staff of Hartman's allegations?

Mr. STELLO. Problems of leak rate in the context as defined in the previous question were apparent during our briefing from the staff in July and August of 1979. It is true that Tim Martin and other Inspection and Enforcement investigators did interview Mr. Hartman in May 1979, however, the potential issue of falsifying leak rates did not come to my attention until sometime considerably later. My understanding was that Tim Martin and the other investigators believed that it was an issue that should have been turned over and indeed was, to the Special Inquiry Group headed by Mr. Rogovin and therefore, it was not necessary to bring these issues to my attention. I understand that Mr. Ornstein, of that group, did pursue this issue, but because of reasons I am not clear on, it was not included in the final Special Inquiry Group Report. This issue was the subject of a number of specific investigations and finally investigated again by the FBI. The results of that investigation have been provided to the Committee.

INVESTIGATORY RESPONSIBILITY

Senator **Exon**. Some of the allegations against you suggest that you either willfully or negligently compromised the potential for criminal investigations by undertaking administrative actions against regulated companies without properly notifying the Department of Justice. During your tenure at the NRC, what was the Commission's general policy about coordination with the Department of Justice about pending investigations and actions?

Mr. **Stello**. Prior to the formation of the Office of Investigations (OI), coordination with the Department of Justice (DOJ) about pending investigations was the responsibility of the Office of Inspector and Auditor (OIA). Following the formation of the OI, the coordination with Justice was divided so that the coordination of matters of wrongdoing of NRC licensees was the responsibility of the OI. Matters relating to potential criminal violations of NRC employees or issues of fraud and abuse within the government were coordinated with the DOJ through the OIA. These offices have the independent authority to make referrals to the DOJ on violations. Prior to 1981, all pending enforcement actions, investigation results, or issues were brought to the attention of the DOJ by the OIA. It was the responsibility of the OIA to coordinate with the DOJ whether it would or would not be interested in pursuing a case. An Office of Inspection and Enforcement/Office of Inspector and Auditor Policy for Referral of Criminal Matters to the Department of Justice and the Federal Bureau of Investigation was drafted that guided the policy for coordination with the DOJ. In simple terms, the document provided that the NRC would inform the DOJ of the issues when the NRC believed there was potential wrongdoing and if the DOJ decided to take the case, the NRC would hold any action in abeyance until the DOJ completed their action. The document also provided that the NRC continue to take any actions they believed were necessary for public health and safety, but would inform the DOJ when they were doing so.

Senator **Exon**. What procedures within the NRC were established to structure the decision as to whether a matter involved a potential criminal violation requiring notice to the Department of Justice?

Mr. **Stello**. Employees within the NRC were responsible for bringing matters that were of potential criminal violations to the appropriate office. In the case of fraud, waste, and abuse or employee misconduct, that would be the OIA. In the case of wrongdoing by licensees, it would be the OI. These offices of the OI and OIA were assigned the responsibility for making the judgment regarding notification to the Department of Justice.

Senator **Exon**. Who had the authority to decide whether a matter involved a potential criminal violation requiring such a referral?

Mr. **Stello**. The authority for deciding whether or not to refer a matter to the Justice Department resides with the Directors of the OI and the OIA.

Senator **Exon**. Before you conducted an inquiry or enforcement action, did you have the authority to decide that a matter did not involve a potential criminal violation or were you required to obtain the approval of someone else within the NRC? Please answer with reference to the following investigations: Nuclear Pharmacy, Stepan Chemical, Three Mile Island, and Zimmer.

Mr. **Stello**. In the course of conducting an inspection, inquiry, or investigation, if there was evidence of potential criminal wrongdoing, before taking enforcement action as the Director of the Office of Inspection and Enforcement, I had the obligation to inform the OIA. Information would be provided to the OIA including any plans for action and then I would await the results of the referral to the DOJ to learn if it concurred with the proposed action. Based on my recollection, all enforcement issues that had the potential for raising questions of criminal violations were referred by the OIA to the DOJ would check with the Justice Department before any enforcement actions were taken. While I cannot recall all specific cases, I do recall there were a number of instances where we deferred completing enforcement action until we had DOJ concurrence before moving forward. Based on my recollection, I believe that was the case of Nuclear Pharmacy, Stepan Chemical, and Zimmer, that is, all of these cases were discussed with the OIA and coordinated with them. I believe that the OIA did consult with the DOJ in each of these cases. I do not recall any discussion with either the OIA or the DOJ with respect to the enforcement action taken against Metropolitan Edison on October 26, 1979, since suspected criminal violations were not raised. However, as the record is clear with regard to the leak rate issue that resulted from the Hartman allegations on the TMI Unit-2 facility, that issue was coordinated both with the OIA and the DOJ.

Senator EXON. Did you ever initiate an inquiry or enforcement action without following the procedures you have outlined for determining whether a matter involved a potential criminal violation and whether it should be referred to the DOJ?

Mr. STELLO. I believe, to the best of my recollection, that I attempted to follow the procedures regarding inquiry or enforcement action with the OI and the OIA as well as the DOJ. I was aware that there were cases where the Directors of NRC offices did not agree with our assessments, and Stepan Chemical is an example of such a case.

NUCLEAR PHARMACY, INC.

Senator EXON. Were you present at a December 14, 1979, meeting of the DOJ and NRC officials concerning the investigation of Nuclear Pharmacy, Inc.? Do you know who represented the NRC at this meeting? When did you become aware of this meeting? Are there any NRC, DOJ, or other documents confirming the agreement of the meeting that would have been distributed to you?

Mr. STELLO. I do not believe I attended the December 14, 1979, meeting. This is based on my recollection and discussion with an NRC staff representative. I do not know who represented the NRC at the meeting. Possible attendees could have been Messrs. Sniezek, Murray, and Ed Podolak. I have no recollection of when and how I would have been made aware of the meeting. Based on discussions with Mr. Lieberman, no documents relating to this meeting were identified.

Senator EXON. You stated in a statement to Senator Glenn dated April 28, 1987, that "by the end of 1979 it became evident that NPI would not agree to the type of language in the consent decree that I deemed necessary. As a result, NPI was informed that no settlement would be forthcoming." On what date was NPI informed that no settlement would be forthcoming?

Mr. STELLO. I was unable to find documents that documented this conclusion and cannot recall the specific date when NPI was so informed.

Senator EXON. Did you meet with NPI officials on January 21, 1980? What was the content of these discussions? At this meeting, did you inform NPI that their practices "did not violate any license conditions or NRC regulations" and that your office had decided to drop Count 2 of its investigation?

Mr. STELLO. I did attend the meeting on January 31, 1980. The purpose and results of that meeting are described in a response to Senator Glenn of April 28, 1987, which is attached and I have no further recollection of that meeting beyond what is discussed in my response to Senator Glenn.

[Information referred to follows:]

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

APR 28 1987

The Honorable John Glenn, Chairman
Committee on Governmental Affairs
United States Senate
Washington, DC 20510

Dear Chairman Glenn:

During the course of your Committee's April 9 hearing you offered me the opportunity to provide a written response to a number of issues raised by witnesses who testified at that time. I will appreciate your consideration of my comments because the charges already on the record cannot be evaluated fairly in the absence of a response. I do not believe any organization is perfect. Mistakes are made and from time to time errors in judgment occur. But to cause such issues to reflect on the entire staff of the NRC is fundamentally wrong. I am convinced that the NRC staff includes the most knowledgeable and professional experts on nuclear safety to be found anywhere in the world. The staff is dedicated to essentially the single mandate of protecting the health and safety of the public. I am confident that my response, which includes issues raised regarding certain staff actions, will resolve these issues to your satisfaction.

My sworn and notarized response is enclosed and is respectfully submitted for the Committee's record. In this regard, I am disappointed that my ability to provide more complete information for the record has been inhibited by the decision to limit access by my staff to deposition transcripts which the Committee intends to make public anyway. The restricted transcripts are returned herewith.

Sincerely,

Victor Stello, Jr.
Victor Stello, Jr.
Executive Director
for Operations

Enclosures:
1. Written Statement and
   Detailed Appendix
2. Depositions of Hayes and Mulley

cc: The Honorable William V. Ross, Jr.

reading of the FBI report and my understanding of the Grand Jury's actions lead me to conclude that all of the issues investigated by the FBI and grand jury were resolved by finding no wrongdoing on my part by design or otherwise. I continue to be troubled by the fact that Mr. Greenspun, using his prosecutorial authority, could head an investigation into issues in which he was personally involved. I think his personal involvement is clear from his own testimony before this Committee. Certainly, his own conduct could have been an issue in such an investigation. I leave to others to judge the propriety and ethics of such behavior. I urge you, Mr. Chairman, to obtain a copy of the FBI Report No. 46A-11367, dated July 1, 1986 and examine it. I trust it will demonstrate to your satisfaction that these old charges were resolved contrary to Mr. Greenspun's personal biases.

Mr. Greenspun also stated that he personally requested that I not meet with a licensee under investigation, and that I subsequently engaged in a lengthy discussion with that licensee. He further stated that the meeting "unnecessarily derailed criminal prosecution," that I knew this would be the result, and that I and my deputy "confessed away the case." Having reviewed the documentation of events of over seven years ago, and after discussions with the other participants, I can state that Mr. Greenspun's interpretation is not correct. The particular case referred to involved an NRC licensee named Nuclear Pharmacy, Inc. (NPI).

When I received the proposed enforcement package from NRC Region III in the summer of 1979, it appeared to me that NPI had committed a very serious violation. The Region had cited NPI for shipping containers of Xenon gas, which were not designated as fit for human use, to various hospitals to be used on humans. Review of records indicate that I decided to substantially increase the civil penalty proposed by the Region. Also, I believe my staff and I considered revocation of the license. In June of 1979 as the then Director of the then Office of Inspection and Enforcement (OIE), I referred the case to the NRC Office of Inspector and Auditor (OIA) for possible referral to DOJ, but retained the right to continue investigating health and safety

implications. The notice of proposed civil penalties was sent to the licensee in August. The licensee responded vigorously, insisting that there were no health and safety problems and that, given the wording of its license, its actions might not constitute a violation.

During the fall of 1979, numerous meetings were held with FDA and others. As these meetings progressed it began to look as though NPI's actions were less serious than originally believed. Nevertheless, in October of 1979 OIA had referred the NPI case to DOJ. At that point NRC lawyers were in touch with DOJ. At no time did the lawyers from DOJ indicate that the NRC should refrain from contacting the licensee. Within this time frame, we considered using a form of consent decree in which the licensee would admit culpability. By the end of 1979 it became evident that NPI would not agree to the type of language in the consent decree that I deemed necessary. As a result, NPI was informed that no settlement would be forthcoming.

NPI thereupon requested one final meeting to present their side of the case. This meeting took place on January 21, 1960, and is the one referred to by Mr. Greenspun. Its only purpose was to hear whether NPI had any new information; not to make any concessions on the part of the NRC. Where the public health and safety is concerned, I believe it is my duty to elicit as much information as possible. During the meeting, NPI reiterated its previous arguments. No statements were made by either me or my staff that could be construed as weakening the case against NPI. Subsequent to that meeting I was informed that Mr. Greenspun had taken the position that there should be no contact between the NRC and NPI, and that the meeting had compromised the DOJ case. I do not agree with Mr. Greenspun's interpretation. In a letter dated November 20, 1981, from Mr. Greenspun to the attorney for NPI, he stated that DOJ had decided to defer prosecution, and that the decision "is substantially based on NPI's representation that it has rectified the activities in question and will continue to comply with NRC rules and regulations". In February of 1982, the NRC Staff imposed its civil penalty on NPI.

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QUESTIONS SUBMITTED BY SENATOR CARL LEVIN

CRIMINAL CONDUCT INVESTIGATIONS

Senator LEVIN. One issue that seems to permeate a number of the allegations involving you, Mr. Stello, is an apparent lack of attention to the possibility of criminal conduct in the cases your offices have investigated. Several of these cases are fairly old—going back to 1980—and the details are undoubtedly not fresh in your mind. But in your White Notebook Response to this committee, you include an August 1981 memo from yourself to James Cummings, Director of the Office of Inspector and Auditor, regarding your office's investigation of Stepan Chemical Company.

The issue in this case was whether or not it was appropriate for your office to share with possible criminal targets the internal Stepan memo which indicated possible fraud by Stepan in covering up a radioactive waste burial site. One paragraph in this memo stands out to me as highlighting a key question about your approach to the Nuclear Regulatory Commission's investigative role. You said:

"We were aware that at least one of the persons interviewed had possibly committed a violation of 18 USC 1001 after he, in effect, lied to us during his first interview. This is not uncommon during investigations; it is a common investigative practice to such case to reinterview the person to allow him to correct his previous misrepresentation. Such reinterviews are valuable, bearing in mind that the purpose of any investigation is to obtain the facts, not to maneuver people into positions wherein they can be prosecuted for crimes that they may not have committed had they been aware of the weight of the information possessed by the investigators. It would appear that the Newark U.S. Attorney's Office has a view concerning the conduct of investigations that focuses on the issue of a 1001 violation rather than the issue of paramount interest to NRC: health and safety. I cannot believe that the position attributed to that office in the subject memorandum reflects the official view of the Department of Justice."

You say in the memo that "the purpose of any investigation is to obtain the facts,"—I agree with that—and "not to maneuver people into positions wherein they can be prosecuted for crimes that they may not have committed"—and I agree with that—and then you say, "had they been aware of the weight of the information possessed by the investigators." That part is puzzling. Does that mean if you have an individual whom you know intentionally lied to the NRC, to cover up wrongful conduct, that the investigator's job is to tell that person that you have the proof that he lied, in order to get him to tell the truth and thereby avoid criminal prosecution? Is that your view of how an investigation should be conducted?

You also state that the "paramount interest" to the NRC is health and safety, as opposed to making out a criminal case. But in order to help guarantee health and safety in the future, doesn't the NRC have to demonstrate to those involved in the nuclear industry that wrongful conduct will be punished? Doesn't the NRC have an obligation to refer possible criminal cases immediately to the Department of Justice in order to establish a strong deterrence to future wrongful conduct?

Mr. STELLO. The intent of the statement "had they been aware of the weight of the information possessed by the investigators," related to an attempt to cause the individual being questioned to reveal other safety information he may have been aware of. By way of background, the Stepan Chemical Company investigation related to identified areas on the site where radioactive material was buried. We attempted in the investigation to identify all such areas where that radioactive material existed on the site. The investigator believed that confronting the individual who had not been forthright in his previous answers would prompt the individual to provide all of the information that he had regarding the subjects of the investigation. It should be noted that this judgment was made by the investigator himself. At that point in time, I certainly did not agree that an investigator should take this approach for the purpose of allowing the person to avoid criminal prosecution; however, if using such a technique can cause a person to provide some needed safety information, then under those circumstances, I believe it is justified.

The investigator's responsibility is clearly to obtain safety information in order for the Agency to fulfill its mandate. I believe that must be their first priority in conducting the investigation. I believe tough, but fair enforcement, including criminal prosecution, is necessary to demonstrate to the regulated industry that improper and wrongful conduct will be punished. The Atomic Energy Act states in Section 221.b, "the FBI shall investigate all alleged or suspected criminal violations of this Act." The Commission had delegated responsibility for referral to the Department of Justice to the Directors of the Office of Investigations and the Office of the Inspector and Auditor.

THREE MILE ISLAND

Senator LEVIN. According to a October 17, 1983, memo from Sharon Connelly, Director of Office of Inspector and Auditor, to the NRC Chairman and Commissioners, in October of 1979, you briefed Commissioner Ahearne regarding the TMI accident. According to the memo, you and another NRC official were asked, "if there was any suspicion of criminal violations regarding the issues for which the staff was proposing civil penalties at TMI." The memo indicates that you and the other NRC official said you had no such indications. However, the memo goes on to say that the NRC Inspection and Enforcement investigative team had received Mr. Hartman's allegations in May 1979 and had not followed up on these allegations. At the time you briefed Commissioner Ahearne regarding the TMI accident investigation, did you know about the Hartman allegations? If not, on what date did you learn of the Hartman allegations and what action did you take to follow-up on these allegations? Did you take any action to refer this matter to the Justice Department?

Mr. STELLO. The answers to these questions are answered in similar questions from Senator Exon.

FIRE PROTECTION REGULATIONS

Senator LEVIN. According to former Commissioner Asselstine, you, as a result of private meetings held with the affected utilities, directed NRC staff to tailor fire protection regulations to fit the needs of the utilities after the regulations had already been approved by the Commission and the fire protection experts. Furthermore, NRC technical experts were bypassed in this process and the advice of these experts ignored.

Were NRC fire protection engineers present at the meeting with industry? Were they asked to attend? Was there public notice of this meeting with industry officials? Were the NRC experts consulted prior to the change in the regulation? If not, why? Did the NRC fire protection experts agree with the revisions? If not, how did you answer their dissenting opinions?

Mr. STELLO. NRC fire protection engineers were involved in the development of the rules and relevant guidance documents that were published by the NRC. At a hearing held by the Subcommittee on General Oversight and Investigations on June 11, 1987, many of the concerns now raised in your letter were addressed.

A letter of August 11, 1987, contained enclosures (enclosures 1 and 2) which responded to Commissioner Asselstine's statements. That document shows that the NRC consulted with many parties during the development of the rules. In addition, numerous meetings, including regional meetings (which were amply noticed), were held with any and all persons concerned with the NRC fire protection requirements, specifically including the NRC fire protection engineers.

The fire protection specialists did not in all cases agree with all of the NRC requirements and differing professional opinions (DPOs) were made. The DPOs were addressed.

[Information referred to follows:]

FIRE PROTECTION

During Oversight Hearings before the House Subcommitte on General Oversight and Investigations of the Committee on Interior and Insular Affairs which were held on June 11, 1987 (Gejdenson hearing), former Commissioner James Asselstine referred to the Commission's fire protection regulations and said:

> "...[A]fter the rule was adopted, again this sort of hard core group of utilities that had been upset about the rule challenged it in court, and after the decision in court, these utilities continued to argue that the rule wasn't clear; that it wasn't clear what was expected of them; that some of the elements of the rule were somewhat gray or ambiguous and that they needed additional guidance.
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> "So as a result of that, the NRC staff developed additional guidance in a Generic Letter, and it was issued in 1983. ... That Generic Letter was developed by the technical staff, the experts, our fire protection engineers. ...
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> "It turns out that this small hard core group of utilities that had been recelcitrant throughout this process still wasn't satisfied. At that point, it wasn't that the guidance wasn't clear. It is just that they didn't like the guidance. And they came back to the NRC staff asking for relief from the current requirements.[1]
>
> "They didn't go to the technical reviewers, the experts, the fire protection engineers; the jumped the chain of command and went up to senior staff management with their appeal." [Tr. 118-19]

Although Mr. Asselstine implies that NRC's rule was fully supported by the Court of Appeals, the court was actually critical of the rule and said:

> "Our decision to uphold the NRC's adoption of the fire protection program is reluctant. At almost every step of the way, the NRC's procedures were less than exemplary. The notice of proposed rule-making was cursory and gave the industry the minimum

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[1] The Nuclear Utility Fire Protection Group, the "small hard core group of utilities" to which Mr. Asselstine refers, represents 25 nuclear utilities or nearly half of the nuclear utilities licensed by the NRC including Baltimore Gas and Electric Co., a utility Mr. Asselstine cites as an excellent example of good fire protection implementation.

Enclosure 1

> acceptable opportunity to respond. The agency's statement of basis for the program in its final form provided limited technical guidance indeed.
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> "Nonetheless, this is a case in which the rule as tempered by the exemption procedure must be upheld. The fire protection program with the exemption procedure is not a radical departure from the program as it was developed after the Brown's Ferry fire and as it was originally proposed. With the exemption procedure, power plants will be able to show that alternative fire protection systems protect the public safety at the same high level as the system chosen by the Commission. Their failure to make such showings will only be further proof that the Commission was indeed correct that the public safety urgently required a stringent fire protection program for nuclear power plants. [Conn. Light and Power Co. v. NRC, 673 F.2d 525, 536 (D.C. Cir. 1982).]

In reality, as the court's opinion makes clear, the Commission's fire protection rule could not be clearly understood and implemented by many utilities because of plant specific design differences. The court upheld the Commission's rule because the Commission firmly committed to allow liberal use of its exemption procedure to account for plant specific difficulties in implementation. As of May 31, 1983 a year after the court's decision the Commission had approved 234 exemptions (out of 588 requests) covering six of the 15 sections of the rule. The staff told the Commission that there was a need for further clarification based on the staff positions which had developed by that time and the identified need to remove requirements which had been demonstrated to be unnecessary. (SECY-83-269, July 5, 1983)

Following Commission consideration of the staff's recommendations, Generic Letter 83-33 was issued on October 19, 1983 setting forth interpretations of the fire protection rules. A series of regional workshops were scheduled to provide further clarification and to answer questions utility representatives ight have regarding the interpretations. In several areas, e.g. suppression and detection and definition of fire area boundaries, G.L. 83-33 required utilities to seek an exemption if their implementation approach was different than the staff review criteria. This process was not established because the utilities' implementation could be determined a "noncompliance" with the rule but rather to insure that the staff could review and concur that the alternative implementation approach in fact met the intent of the rule. There are, of course, other procedural mechanisms which can be used to reach the same result without the necessity of processing exemptions. In some instances there were more utilities seeking exemptions to particular provisions than there were utilities who thought the staffs' approach was the best for their facility.

As a result of a seminar sponsored by utilities to discuss fire protection interpretation difficulties held in mid-February, the Nuclear Utility Fire Protection Group submitted to NRC staff on March 6, 1984 a list of issues which it believed were not clearly addressed in the Commission's rule. This group met with NRC program staff (NRR) on the morning of March 8, 1984 and met with Vic Stello, Deputy Executive Director for Regional Operations and Generic Requirements that afternoon. This sequence of events led to yet another attempt to provide comprehensive guidance and clarification of the fire protection rules. The guidance was distributed to operating reactor licensees at regional workshops held in the spring of 1984. Following the workshops, the receipt of comments of many utilities, and the filing of a Differing Professional Opinion co-signed by five NRC staff personnel involved with fire protection reviews (later supported by a sixth), it was pparent that further clarification was necessary. The principal concern of the staff personnel was that timely and/or consistent resolution of fire protection issues was not possible.

At a May 30, 1984 Commission meeting, it was apparent that significant questions concerning fire protection interpretations were being raised by the industry, staff inspectors, staff reviewers, and by legal interpretations within the agency. On August 27, 1984 the Executive Director for Operations, William J. Dircks, directed the formation of a Steering Committee consisting of membership from the agency's regional and legal staff as well as its Office of Nuclear Reactor Regulation. The Committee was directed to conduct a comprehensive review of current fire protection issues.

ollowing meetings with fire protection engineers from headquarters and the regional offices, five specific concerns surfaced: 1) the responsibility for fire protection was fragmented since four headquarters organizations and five regions were attempting to provide interpretative guidance; 2) fire protection guidance and technical specifications were inconsistant and inadequate and no list of "minimum requirements" existed; 3) regional inspectors needed an enforcement policy and a policy for fire protection quality assurance; 4) a need for control room electrical review was identified; and 5) no agreement on the interpretations in G.L. 83-33 was readily apparent.

What clearly emerges from this history is the accuracy of the Court of Appeals' assessment of the rule, i.e., in its final form it provided limited echnical guidance. As a result, the Steering Committee developed specific, consistent, concrete recommendations which were then circulated within the agency for staff comment and were then published in the federal register for public comment in January 1985. Following revisions in light of comments, the comprehensive fire protection interpretations were presented to the Commission for review and approval in September 1985. The Commission approved the issuance of these interpretations and on April 24, 1986 Generic Letter 86-10 was issued. By March of this year the staff was able to recommend final disposition of several long pending fire protection enforcement actions to the Commission.

Enclosure 1

FIRE PROTECTION ISSUE CHRONOLOGY

3/22/75	Major fire occurs at Browns Ferry Nuclear Plant affecting a number of normal operating and safety systems.
2/21/76	NRC Special Review Group on Browns Ferry Fire issues report on incident (NUREG-0050). More than 50 recommendations for improvement of fire protection at nuclear power plants are made by the Review Group.
5/1/76	NRC staff issues new fire protection guidelines for nuclear power plants based on NUREG-0050 recommendations. Licensees are requested to compare fire protection features of their facilities to these guidelines. [A complete listing of post-Browns Ferry fire protection guidance developed/issued by the NRC staff is provided in an attachment to this chronology.]
Early-1977	All licensees provide a Fire Protection Program Evaluation for their facilities identifying areas that do not conform to new NRC guidelines. NRC staff initiates effort to achieve full implementation of new guidelines by October 1980.
Early-1980	Most new fire protection guidelines have been implemented by most licensees; but several items remain outstanding and some licensees will not implement these remaining items voluntarily.
5/29/80	Commission issues proposed rule (IOCFR50.48 and Appendix R) to resolve remaining fire protection issues in operating reactors.
11/19/80	Commission issues final fire protection rule for operating reactors. This new rule backfits new requirements for protection of safe shutdown capability to all operating reactors, even those for which the NRC staff has already accepted alternative fire protection features in the fire protection reviews under the new post-Browns Ferry guidelines.

1/29/82	New fire protection rule is challenged in U.S. Court of Appeals by licensees belonging to Nuclear Utilities Fire Protection Group (NUFPG). Licensees contend that NRC did not indicate or explain the technical bases for new rule in noticing proposed fire protection rule revisions.
3/16/82	Court of Appeals upholds NRC on new fire protection rule, because rule includes explicitly a provision for licensees to request exemption from any aspect of the new rule upon showing that modifications required under the new rule would not enhance fire protection safety or that such modifications may be detrimental to overall facility safety.
7/5/83	NRC staff reports to Commission (in SECY-83-269) that, as of the end of May 1983, licensees have requested 588 exemptions from Appendix R requirements.
10/19/83	NRC staff issues Generic Letter 83-33 informing licensees that staff evaluations of exemption requests, and initial inspections at several facilities for compliance with Appendix R requirements, indicate serious problems with licensees' interpretation and implementation of Appendix R requirements.
11/15/83	General meeting in Bethesda, Md. of cognizant NRC program and regional office personnel responsible for fire protection implementation to discuss serious, widespread confusion among licensees regarding Appendix R interpretation. Decision is made to issue Information Notice and hold workshops in each region to address these problems.
12/19/83	Order imposing $50,000 fine for violations of Appendix R requirements at Trojan Plant is signed by Director of Inspection and Enforcement, NRC. Licensee's response to citations indicates that confusion regarding interpretation of Appendix R requirements is a major factor in the development of this situation. This action by NRC focuses strongly the utilities' concerns regarding the need for clarifications by NRC regarding Appendix R interpretations.
2/13/84	Information Notice 84-09 is issued by NRC staff informing licensees of non-compliance problems noted in initial Appendix R inspections, providing supplemental guidance regarding acceptable interpretations of Appendix R requirements,and advising of upcoming regional Appendix R workshops.

2/14-15/84 General meeting sponsored by NUFPG for all operating reactor utilities to discuss Appendix R interpretation difficulties, and to identify specific Appendix R issues and common areas of confusion among licensees that require clarification by NRC.

3/2/84 NUFPG submits formally to NRC staff "Questions Raised During The Nuclear Utility Fire Protection Seminar", for discussion with NRC staff at a meeting on 3/8/84.

3/6/84 NUFPG submits formally to NRC staff "Issues Which Are Not Clearly Addressed In The Fire Protection Rule", for discussion with the NRC staff at a meeting on 3/8/84.

3/8/84 NUFPG meets during the morning with cognizant NRC program office management, and during the afternoon with the Deputy Executive Director for Operations and members of his staff, to discuss Appendix R questions and interpretation issues raised in the 3/2/84 and 3/6/84 NUFPG submittals.

3/22/84 NRC staff provides to Commission for information a comprehensive new package of proposed guidance to assist operating reactor licensees in interpreting and implementing the requirements of Appendix R. The new guidance package addresses directly the questions and problems that have arisen in connection with Appendix R fire protection reviews and inspections to date (in particular, the extensive set of questions and issues identified and submitted by operating reactor utilities through NUFPG). The new guidance package is also distributed to all affected operating reactor licensees.

3/23/84 First of five NRC regional Appendix R workshops is held in Region III (Chicago, Ill. area) to discuss new Appendix R guidance package. Similar workshops were held subsequently in each NRC region as follows:

Region V	(San Fransisco area)	4/5/84
Region I	(Philadelphia area)	4/18/84
Region IV	(Dallas area)	4/26/84
Region II	(Atlanta area)	5/4/84

(Notice of these meetings was sent by the NRC Regional Offices to all affected licensees/applicants, to cognizant state government officials and Local Public Document Rooms, and to a number of public interest groups, intervenors, and other interested members of the public, well in advance of the workshops, in accordance with standard NRC document distribution service lists.)

5/2/84	Differing Professional Opinion submitted (co-signed) by five NRC program office and regional inspection staff, objecting to use of new Appendix R interpretations included in the new guidance package. The concern is expressed that the new interpretations will not permit timely or consistent resolutions of Appendix R deviations.
5/29/84	A member of the Office of General Counsel (OGC) staff expresses legal concerns regarding the new Appendix R interpretations in a memo to the Commissioners' Techhical Assistants.
5/30/84	Commission meeting to discuss technical concerns expressed in Differing Professional Opinion by staff engineers and regional inspectors, as well as legal concerns expressed by OGC staff member.
8/27/84	NRC Executive Director for Operations (EDO) initiates a comprehensive review of current fire protection issues by the Fire Protection Policy Steering Committee (FPPSC). The FPPSC was tasked to examine all current licensing, inspection, and technical fire protection issues, and to develop policy recommendations aimed at expediting Appendix R compliance for older plants and assuring consistent levels of fire protection safety at all plants.
10/2/84	FPPSC meets with headquarters and regional fire protection engineers to obtain their candid views on all current fire protection issues.
10/26/84	The FPPSC complete their review of current fire protection issues and report their findings to the EDO. The FPPSC support the proposed new Appendix R guidance package (with only minor changes) as the official agency position on all Appendix R interpretation issues covered therein. The FPPSC report is distributed to all cognizant program and regional office organizations for comment.
12/10/84	The NRC EDO identifies questions raised by internal comments on the FPPSC that need to be answered before proceeding to the Commission for decision on Appendix R issues. NRC staff is directed to release FPPSC report to PDR for comment by interested parties, and to prepare a Commission Paper on this matter taking into account comments received.
1/15/85	NRC staff issues Generic Letter 85-01, transmitting FPPSC report to operating reactor licensees and requesting comment.

6/24/85	NRC staff completes fire protection Commission Paper, taking into account comments received on FPPSC report, and transmits to the EDO a comprehensive fire protection package for final consideration by the Commission.
7/24/85	The Committee for Review of Generic Requirements (CRGR) reviews the final fire protection package as requested by the EDO. The Committee concludes that the detailed guidance proposed by the NRC staff in the fire protection package can be usefully applied in facilitating the implementation of Appendix R, and recommends that it be sent forward for Commission consideration subject to several minor changes.
9/17/85	Commission Paper (SECY-85-306) containing final NRC staff recommendations on implementation of Appendix R is sent to the Commission.
10/3/85	Commission meeting to discuss SECY-85-306. Current views of fire protection technical staff who submitted DPO are requested. (Current views were provided in memos dated 9/20/85, 10/25/85 and 11/14/85.) Several additional items requiring further attention or modification by NRC staff were also identified by the Commission. (These items were addressed subsequently by the staff in SECY-85-306A on 12/3/85, and in SECY-306B on 12/19/85.)
10/24/85	OGC provides to Commission a legal analysis of new Appendix R interpretations proposed by NRC staff in SECY-85-306. OGC concludes that all but one of the interpretations are legally correct and that legal concerns about another could be overcome by a strong technical safety argument supporting the new interruption. This resolves concerns expressed by OGC staff member in 5/29/84 memo to Commission.
11/27/85	Recommended resolution of technical staff DPO opposing new Appendix R interpretations is submitted to Director, NRR, in accordance with applicable NRC procedure (NRC Manual Chapter 4125). Finding of designated official is that the DPO fails to justify modification of the NRC management decision to develop new Appendix R interpretations and guidance to facilitate implementation of Appendix R.
3/7/86	Commission approves issuance of Generic Letter (GL-86-10) to licensees promulgating new Appendix R interpretations and guidance.
4/24/86	NRC staff issues Generic Letter 86-10, "Implementation of Fire Protection Requirements".
3/27/87	SECY-87-84 sent to Commission by NRC staff summarizing Appendix R inspection activities and escalated enforcement actions, and recommending final disposition of several long pending enforcement actions.

QUESTIONS SUBMITTED BY SENATOR TIMOTHY E. WIRTH

THREE MILE ISLAND

Senator WIRTH. Do you recall when you received information from Harold Hartman, a reactor control room operator, regarding deliberately doctored test data on reactor leak rates?

Mr. STELLO. The Commission has addressed these issues before. My best recollection is that I became aware of it from a television reporter, Ira Rosen, sometime in March 1980. At that point I requested an investigation.

Senator WIRTH. Could you tell us the purpose of the leak rate tests and the significance of falsifying those tests?

Mr. STELLO. Leak rate tests are used to monitor primary system integrity. Limits on the allowed leakage are set in the Nuclear Regulatory Commission's license for the facility. Falsifying those test results would be in direct conflict with NRC license requirements and is an unacceptable practice. Appropriate enforcement action can be taken by the NRC up to and including civil penalties, shutdown, or license revocation.

Senator WIRTH. Is it not the case that had the Nuclear Regulatory Commission regulations been followed, the data from those tests would have forced the reactor to shut down? Would not this have prevented the very serious accident at Three Mile Island?

Mr. STELLO. My recollection is that this was controversial in that it was unclear at the time whether the leakage was from the safety valves or the primary system relief valves. If the safety valves were leaking, these valves were not isolable and if the license limits are exceeded, the plant would have to be shut down to repair the valves. If the leakage was from the relief valves, block valves could have been used to isolate the relief valves and reactor shutdown would not be required. As I recall, the NRC concluded as a major portion of the enforcement action, that the leakage was from the relief valves and either closing the block valves or reactor shutdown should have prevented the accident.

Senator WIRTH. Did not investigators under your command fail to follow-up Hartman's allegations? Why was that?

Mr. STELLO. The Nuclear Regulatory Commission investigations, as well as the investigation as part of Rogovin's Special Inquiry Group, did not follow-up on the Hartman allegations. As I have already pointed out, I was not responsible for the inspection and enforcement activities when the initial investigation started and assumed those responsibilities in July 1979. At that time, the investigators within the Office of Inspection and Enforcement were completing their report and concurrently turning over materials to the Special Inquiry Group. This issue is explained further in response to questions from Congressman Udall dated October 17, 1983. In particular, refer to the response to question 2.c. which is attached.

[Information referred to follows:]

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

AIRMAN

October 17, 1983

The Honorable Morris K. Udall, Chairman
Committee on Interior and Insular Affairs
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Your letter of August 1, 1983 requested the Commission's response to a number of questions regarding the allegations that leak rate calculations were falsified at Three Mile Island, Unit 2 prior to the 1979 accident. Responses to your specific questions are provided in Enclosure 1. In addition, recent memoranda from William J. Dircks, Executive Director for Operations, to Commissioner Gilinsky, address some of the same questions you have asked. They are enclosed for your information and are referenced, when appropriate, in responding to your specific questions.

In addition, in a letter to you dated June 1, 1983 then Acting Chairman Ahearne answered Questions 2 through 5 of your February 25, 1983 letter and stated that the answer to Question 1 would be provided later. Enclosed herewith is the Commission's answer to Question 1.

Finally, enclosed for your information are two recent Board Notifications from the staff concerning their previously stated position in the TMI-1 restart record regarding the falsification of leak rate data which has proven to be incorrect.

Commissioner Gilinsky adds that while the NRC staff informed the Commission of the existence of the Hartman allegations and of the referral to the Department of Justice, the NRC staff did not, until quite recently, share with the Commission its evaluation of the seriousness and significance of those allegations. No satisfactory explanation has been given for this reticence.

Sincerely,

Thomas M. Roberts
Acting Chairman

Enclosures:
See Next Page

Note: Identical ltr sent to
Markey w/same enclosures.

cc: Rep. Manuel Lujan

(Originated by JGoldberg:ELD)

Enclosures to Chairman Palladino's letter to Congressman Udall

1. Answers to August 1, 1983 Questions from Congressmen Udall and Markey
2. Answer to Question 1 from Chairman Udall's February 25, 1983 letter.
3. Memorandum from Commissioner Gilinsky to William J. Dircks, May 31, 1983
4. Memorandum from William J. Dircks to Commissioner Gilinsky, June 10, 1983, with attachments
5. Memorandum from Commissioner Gilinsky to William J. Dircks, June 29, 1983
6. Memorandum from William J. Dircks to Commissioner Gilinsky, July 19, 1983
7. NRC Staff's Memorandum on the Status of its TMI-1 Restart Review, July 21, 1983
8. Memorandum from William J. Dircks to the Commissioners, June 29, 1983
9. TMI-1 Appeal Board Memorandum and Order (ALAB-738), August 31, 1983
10. Board Notification 83-138
11. Board Notification 83-138A

Note only enclosures 1 & 2 are included.

ENCLOSURE 1

ANSWERS TO AUGUST 1, 1983 QUESTIONS FROM CONGRESSMEN UDALL AND MARKEY

Question 1.

> When did NRC staff first reach a conclusion as to the substance of the Hartman allegations concerning leak rate falsification at TMI-2? What was the basis for any such conclusions? When and by what means were the Executive Director for Operations and the Commission informed of the conclusions? Please provide a complete list of persons who, prior to May 1983, had reached or known of conclusions concerning falsification of leak rate records.

Answer:

The NRC staff has never reached a final conclusion as to the substance of the Hartman allegations concerning leak rate falsification at TMI-2. The NRC investigation of those allegations began in March 1980 and, within a week or so, sufficient information had been gathered to lead the staff to conclude that the leak rate test results had likely been falsified. The primary basis for this conclusion was an interview by NRC inspectors Martin and Christopher with Mr. Hartman, a sworn statement taken at that interview, other interviews of plant personnel, and a subsequent examination of GPU records related to the leak rate tests. During the latter part of March, the NRC's Office of Inspector and Auditor (OIA) exchanged a few preliminary phone calls with the Department of Justice (DOJ), informing them of the possibility of a referral for criminal prosecution. In April 1980, representatives of the NRC met with members of DOJ to brief them on all of the information in its possession. With the referral to DOJ , NRC brought its own investigation to a halt and a final staff position on this matter was never formulated.

With respect to when and the means by which the Executive Director for Operations (EDO) and the Commission were informed about the Hartman allegations and the staff's investigation into them, as best we can reconstruct, the Commission was first informed of this matter in writing in SECY-A-80-74, Memorandum and Order, Motion to Quash Subpoenas Issued by the Director, Inspection and Enforcement (I&E), dated May 23, 1980. A copy of that paper is enclosed. The Commission approved the proposed Memorandum and Order on May 28, 1980 without a staff briefing on the matter. Also, as best we can reconstruct, the Commission was first informed of the general nature of this matter orally in the March/April 1980 timeframe. Victor Stello describes the situation as follows:

> "Due to the sensitivity of this matter, my discussions with various Commissioners and senior staff consisted of oral conversations and briefings. General status of ongoing investigations were reported at weekly EDO staff meetings, some of which included attendance by the Chairman and representatives from other Commission offices. While information concerning the Hartman allegations was generally desseminated (sic) orally, the Commission's understanding of this matter is reflected in writing, specifically its Memorandum and

> Order of May 18, 1980 which referred to falsified test results and the ongoing Grand Jury investigation. A copy of that Memorandum and Order is enclosed. See specifically page 6. Further, this matter is specifically discussed in Supplement 1 of NUREG-0680, issued November 1980, and Supplement 2 of NUREG-0680, issued March 1981. All of these documents received wide distribution throughout the agency."
>
> (See attached Memorandum from Victor Stello, Jr. to William J Dircks dated June 10, 1983 (Attached to the June 10, 1983 Memorandum from William J. Dircks to Commissioner Gilinsky)).

The records of Commission meetings around and preceding May 1980 do not reveal any meetings on this subject nor do the Commission's Secretariat files contain documents dated in that timeframe on this matter (other than SECY-A-80-74).

With regard to a complete list of persons who, prior to May 1980, had reached or known of conclusions concerning falsification of leak rate records, as best as we can reconstruct, the following individuals apparently reached a conclusion that the allegations were correct: Mr. Thomas T. Martin, Team Leader of the I&E investigation, and Mr. Harold L. Ornstein of the Special Inquiry Group (SIG). Apparently, the management of the SIG was aware of the conclusion of Mr. Ornstein. With regard to the I&E investigation of March/April 1980, the results and conclusion of that investigation were never documented until June 1983. However, the results of the investigation were discussed in great detail with senior management in I&E and with the Director, OIA in April and May of 1980. Apparently, no one was aware of Mr. Martin's conclusion prior to May 1983. As best as we can reconstruct, senior members of the Office of the Executive Legal Director (ELD), I&E, Region I, the Office of Nuclear Reactor Regulation, OIA and the EDO had concluded in March/April 1980 that, although no final staff conclusions had been reached, leak rate test results had likely been falsified prior to March 28, 1979. The Commission was aware of the allegations and of the referral to DOJ in the April/May 1980 timeframe.

Question 2.

After concluding in 1980 that TMI-2 leak rates were falsified, the NRC staff apparently did not inform the ASLB, the Appeal Board, the Commission or the Department of Justice. How does the Commission explain or answer the following:

a) the staff's failure to inform the Commission prior to 1980, of Hartman's leak rate allegations made to the Office of Inspection and Enforcement in May 1979, and then repeated to the NRC's Special Inquiry Group in October, 1979?

Answer:

After Mr. Hartman made his allegations in May 1979 and repeated them in October 1979, nothing was done within I&E and OIA on this matter until March 23, 1980. (The reasons for this lapse are given in responses to Questions 2.b, 2.c, and 2.d.) Thus, prior to 1980, staff was aware of the allegations, believed the matter would be pursued in other investigations, and, as best as we can reconstruct, made the judgment that the information in hand prior to 1980 was neither sufficient enough nor serious enough to warrant calling this particular matter to the attention of the Commission before the Kemeny Commission and Special Inquiry (SIG) had completed their investigations. As it turned out, this matter was not pursued by either of the latter groups (beyond the write up of the interview conducted by Mr. Ornstein which was not included in the SIG report).

Question 2 (Continued).

b) what prompted the Commission to initiate, in early 1980, an inquiry into the Hartman allegations?

Answer:

The investigation into the Hartman allegations began on March 22, 1980 in response to the NRC's contact by Ira Rosen preceding his televised interview of Mr. Hartman on March 24, 1980.

Question 2 (Continued).

c) the failure of the Office of Inspection and/or the Office of Inspector and Auditor to conduct an investigation after allegations concerning leak rate falsification were made in May 1979 and October 1979?

Answer:

The purpose of the 1979 I&E investigation was to develop information concerning the events during and immediately after the TMI-2 accident. At that time, I&E apparently believed pursuit of the Hartman allegations would not add relevant information to the body of knowledge being developed for that purpose. Also, as best as we can reconstruct it, the staff knew the Kemeny Commission and the SIG were to investigate thoroughly the accident and believed that those investigations would pursue the matter. In fact, the I&E investigators provided the SIG the information they developed on the Hartman allegations (as well as all of the other information that had been obtained during the I&E investigation).

On October 29, 1979 the NRC's Mr. Harold L. Ornstein, detailed to the SIG and assigned to investigate TMI operator training, deposed Mr. Hartman. On December 3, 1979 Mr. Ornstein prepared a draft written description of Mr. Hartman's allegations for inclusion in the final SIG report. (See answer to Question 2.e, below)

Question 2 (Continued).

d) the lapses between: (1) the time when the NRC learned of the Hartman allegations and the time when the NRC inquiry into these allegations was initiated; and (2) the time when NRC staff had concluded that leak rate calculations had been falsified and the time when the Commission learned of this conclusion. Has OIA investigated, or does it plan to investigate, whether NRC personnel improperly withheld information? Who does the Commission believe is responsible for those incidents of apparent withholding of information?

Answer:

The answers to Questions 1, 2.a), 2.b) and 2.c) provide an explanation as best as we can reconstruct it, of the lapses in the investigation. As to whether information was improperly withheld from the Commission on this matter, to the extent to which there is controversy and questions being raised about this matter, the Commission attributes this state of affairs to not aggressively pursuing potentially serious allegations. Given that the Commission was informed of the existence of the Hartman allegations and of the referral to the DOJ, the Commission does not believe there is any basis to direct OIA to investigate whether there was any improper withholding of information.

Question 2 (Continued).

e) Why was the substance of the "Ornstein Draft" concerning Hartman's allegations not included in the report of the Special Inquiry Group?

Answer:

The Commission directed the Office of the General Counsel (OGC) to contact appropriate senior members of the SIG and Mr. Ornstein to obtain their responses to this question. We will provide those responses to you as soon as they are obtained.

Question 2 (Continued).

f) Were representatives or employees of General Public Utilities (or Metropolitan Edison) permitted to observe and sit in on interviews conducted by the NRC in 1980 concerning Hartman's allegations? If yes, why was this allowed and under whose authority was it permitted?

Answer:

Yes, representatives of Metropolitan Edison Company, in all cases an attorney acceptable to the interviewee, and in some cases also a union representative at the request of the interviewee, were permitted to observe and sit in on interviews conducted by the NRC in 1980 concerning the Hartman allegations. The presence of an attorney retained by the Metropolitan Edison Company was allowed under the authority of Victor Stello, Jr., then Director, I&E, based on a legal opinion he obtained from the ELD. Mr. Stello was advised by ELD that if the interviewee stated that the attorney was his chosen representative, then the NRC investigators were to proceed with the interview with the attorney present.[1] Mr. Stello was advised that it was up to the attorney present to decide for himself whether his relationships with Metropolitan Edison Company and the individual interviewee gave rise to a conflict of interest, and that such an issue was one to be resolved by the attorney under the applicable Code of Professional Responsibility.[2] Based on this legal advice, Mr. Stello directed the investigators that if an interviewee stated that the attorney present represented the interviewee, then the investigator was to proceed with the interview with the attorney present. There was no written policy in 1980 on this aspect of investigations. Since there was no NRC policy then on the presence of third parties during interviews, the presence of third parties was not considered unacceptable. The Commission presently is considering the preparation of written guidance for investigators on the presence of third parties during interviews and has established the Advisory Committee for Review of Investigation Policy on Rights of Licensee Employees Under Investigation which has considered the matter and has reported its findings and recommendations to the Commission.

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[1] This advice was based, in part, on Section 555(b) of the Administrative Procedure Act, 5 U.S.C. §555(b), which provides in pertinent part:

> A person compelled to appear in person before an agency or representative thereof is entitled to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative.

[2] In fact, during one interview, the attorney stated that he could no longer represent the interviewee because of his relationship with Met. Ed. At that point, the interview was concluded after the interviewee declined to answer further questions. From that point on, the operators at TMI declined to be interviewed without subpoena.

Question 3.

> The NRC and the Department of Justice apparently have a difference of opinion as to whether, in October 1981, DOJ informed the NRC that it was free to resume its investigation of the Hartman allegations? If yes, why was this allowed and under whose authority was it permitted?

Answer:

Based upon consultations with the DOJ, we have concluded that there is in fact a disagreement between NRC and DOJ, concerning whether the Commission was advised in October 1981 that it could proceed with its investigation of the Hartman allegations. Communications between the two agencies concerning the Hartman matter were almost always oral. It appears that a misunderstanding may have emanated from these oral communications. As a result, DOJ believed that NRC understood in October 1981 that there was no objection to proceeding with its civil investigation. In contrast, the Commission believed that the DOJ wished the NRC to continue to delay proceeding with its civil investigation, and the Commission was aware through inquiries from late 1981 through early 1983 that the DOJ was continuing its investigation.

To avoid repetition of any like misunderstandings, the DOJ and the NRC will embark upon a review of referral procedures.

Question 4.

> In a 1981 filing before the Atomic Safety and Licensing Board, the staff: 1) stated that the Department of Justice prohibited the staff from disclosing details of the Hartman allegations with the Board; (2) stated that there was no direct relationship between the Hartman allegations and the TMI-2 accident, and; (3) failed to state that the leak rate calculations had been falsified. The staff wrote:
>
> > NRC's investigation effort was suspended pending conclusion of the DOJ investigation, at their request, to avoid parallel administrative and criminal proceedings. The DOJ investigation is still ongoing, and the NRC does not possess any information as to when it may be completed. NRC personnel involved in the suspended investigation have been requested by DOJ not to discuss the details of the matter. However, the staff has reviewed the information that it had obtained to date on the matter, and has concluded on the basis of information thus far obtained that there is no direct connection with the TMI-2 accident.*
> >
> > *See Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1) LBP-81-32, 14 NRC 381, 557, para. 504 August 27, 1981), emphasis added.
>
> Does the Commission believe that the above quoted paragraph written by the NRC staff provided the ASLB with accurate and complete information ? If not, how does the Commission plan to reevaluate the board's decision on management competence in light of new information?

Answer:

The Hartman allegations are the subject of ongoing investigations by I&E and by DOJ. In addition, pursuant to an Atomic Safety and Licensing Appeal Board Order (ALAB-738), dated August 31, 1983, the Hartman allegations concerning falsification of leak rate test data may be the subject of a reopened evidentiary proceeding before th Licensing Board. It would therefore be inappropriate for the Commission to comment at this time on the accuracy and completeness of the quoted paragraph.

Question 5.

> How does the Commission explain the apparent discrepancy between the statement in Inspection Report 50-320/79-10 dated October 25, 1979, concerning the relationship between the effect of elevated discharge line temperatures upon the TMI-2 accident, and the staff's statement, quoted in question 4 above, which implies that the elevated discharge pipe temperatures were not a significant factor in the accident.

Answer:

The two statements which are the subject of Question 5 are a part of the record on management issues that is currently pending before both the Commission and the Appeal Board. The relationship between the Hartman allegations and the accident, if any, has yet to be fully analyzed. For the reasons given in the answer to Question 4, it would be inappropriate for the Commission to comment on the two statements cited in Question 5.

ENCLOSURE 2

ANSWER TO QUESTION 1 FROM CHAIRMAN UDALL'S FEBRUARY 25, 1983

Question 1.

> Has the Commission ever received a report on the alleged manipulation of the leak rate calculations performed in the weeks preceding the March 29, 1979 accident? What was the disposition of any such report?

Answer:

Until the end of March, 1983, the Commission never received any report on the alleged manipulation of leak rate calculations preceding the March 29, 1979 accident at TMI-2. As explained by Mr. Dircks in a Memorandum to the Commissioners dated June 29, 1983 (attached):

> At a March 21, 1983 meeting between Mr. R. Arnold of GPU and members of the NRC team rviewing the B&W-GPU trial court record, Mr. Arnold referred to a GPU investigation into the Hartman allegations and noted that GPU was considering giving that investigation report to DOJ.[1/] The Report was subsequently forwarded by GPU to DOJ and through DOJ to the NRC with the request from DOJ that NRC maintain the Report in confidence. In early April of 1983, the NRC received a copy of the Report directly from GPU with no limits placed upon its use.
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>
> [1/] The report is entitled "Results of Faegre & Benson Investigtion of Allegations by Harold W. Hartman, Jr., Concerning Three Mile Island Unit 2," dated September 17, 1980, hereinafter "the Report."

Finally, on May 4, 1983, GPU distributed the Report to the Appeal Board and parties to the management phase of the TMI-1 restart proceeding.

The Report was discussed at a Commission meeting on March 30, 1983. The Commission requested the staff to determine whether any reporting requirements were violated by GPU's delay of nearly three years in submitting the Report to the Commission. In the June 29, 1983 memorandum from Mr. Dircks to the Commissioners, the Staff concluded that GPU (formerly Metropolitan Edison Company) should have made a more prompt board notification of that Report.[*/]

[*/] The Staff has acknowledged that "it might also be subject to criticism for not providing additional information on the Hartman matter. The Staff did not do so in order to avoid any possible interference with the DOJ investigation." June 29th memorandum at 7-8.

Senator WIRTH. Nearly one year after the accident, Harold Hartman took his charges public on television. Is it fair to say that this was the act of a desperate man, that he felt he had important information which the Nuclear Regulatory Commission and you refused to address?

Mr. STELLO. I have no recollection or have any specific information regarding Mr. Hartman's motives for his actions.

Senator WIRTH. How do you explain the fact that shortly after Harold Hartman went on television your investigators suddenly decided his allegations were substantial and referred them to the Department of Justice?

Mr. STELLO. After I became aware of the allegations, I immediately directed that an investigation be initiated. Two investigators talked to Mr. Hartman. When it became clear from the results of the investigation that potential criminal activity may be involved, the matter was referred to the Department of Justice.

Senator WIRTH. Why were the commissioners not informed of these significant allegations?

You claimed at the time that you had earlier told the commissioners and the Inspection and Enforcement staff that Harold Hartman's allegations were correct. However, two commissioners denied this and there was no supporting evidence. Do you have such evidence today?

Julian Greenspun, former Deputy Chief of Litigation with the Justice Department has testified that ". . . certain senior NRC officials continued to insist that the utility's conduct at TMI was acceptable . . . it is my belief that these officials actively misled and even lied to the Justice Department in the TMI case. Perhaps most revealing, in a meeting with myself and other prosecutors, Mr. Stello . . . said that an investigation at TMI would be bad for the operators' morale and 'nobody is going to tell me how to treat my licensees.' " Why did it take you so long to refer the allegations to the Justice Department? Did Mr. Greenspun quote you correctly? How do you justify this attitude?

Mr. STELLO. These questions primarily deal with issues that were the subject of an FBI investigation relative to the accident at TMI Unit 2. The results were documented in the report by the FBI (46A-11367) dated July 1, 1986; I understand that this report has been made available for review by Committee members. Parts of these questions were also addressed during oral testimony at the confirmation hearings on November 15, 1989. In addition, I had expressed concern, as noted by Mr. Greenspun, regarding the conduct of criminal investigations and morale of operators at the operable TMI Unit 1 as that may impact safe operation given the assumption that it would be given permission to restart. I note this observation in contrast to my concerns regarding investigations related to the early days following the accident associated with Unit 2 that I discussed during my confirmation hearing.

Senator WIRTH. In 1982 a trial began to resolve a lawsuit brought by TMI management officials against Babcock and Wilcox which built the Unit 2 reactor. In December of that year, the commissioners asked you to review the record of the lawsuit. Your report on the trial record 4 months later concluded that it contained no information that would affect the Commission's decision to allow TMI management to restart and operate the second undamaged reactor. After reviewing your report, four of the five NRC commissioners denounced it, noting that it had few references to the actual trial and was essentially a rehash of earlier accident reports. The commissioners removed you from the matter and assigned a 25-member panel to handle it. In September 1983 that panel determined that the trial record raised seven issues pertinent to restart, a direct contradiction of your earlier claims. How does this episode speak to your competence to manage the Department of Energy's deeply troubled production complex?

Mr. STELLO. The overall question asserts that the report generated by the four NRC reviewers of the TMI management/B&W lawsuit was denounced by the commissioners. This belief is not consistent with a review of the Commission meeting transcript of April 6, 1983, which was a verbatim transcript of the commissioner's 2-hour meeting of that review.

At the conclusion of the meeting, each commissioner commented on the context of the review. That record stated:

> Page 82, Line 10-Line 25—Commissioner Ahearne: I would like to at least somewhat respond. I am not sure whether, given the time schedule we're on, I will end up being in a position to take a vote on TMI. But had I been, it was important for me to have a group of people like yourself who were familiar with the background to go through all this material.
>
> And I realized at the time when I was proposing it that it would be backbreaking, and so I do very much appreciate all of that effort that you had to put

in to do it. And I recognize that it's very hard hours and very valuable people putting in very long, hard hours.

Commissioner Gilinsky: I don't have anything further to add on this report. But I do want to reiterate that I think the Commission acted improperly when it blocked my request for a memorandum from the General Counsel and—

Page 87, Line 25–Page 88, Line 25—Commissioner Asselstine: The last point I wanted to make just a brief comment. It's been clear from the questioning that there are a lot of complex questions that are raised by this report, certainly by the issues that arose out of the TMI accident. The fact that there are a lot of difficult questions and there are questions about how you all came down on certain ones, at least in my own mind doesn't in any way reduce my own feeling, the same as Commissioner Ahearne's, that I think it was important for a group like you all to review this, and I recognize what a burden it was on you, particularly since some of you apparently also had to do your other jobs as well in the meantime. And I think you all do deserve our thanks and appreciation for having taken this on and having done what inevitably has to be a largely thankless task.

Commissioner Roberts: I agree with that, but a minor comment. I like the format of the report. I don't want to read footnotes and citations of pages of transcripts, and we either trust you people to do a decent job and come up with an honest report, or we don't. And I join the others in saying thank you for a terrific effort.

Chairman Palladino: I certainly appreciate the effort you made. I still maintain that there are places in the report where presentation could have helped, but I didn't take that on as a major criticism. Thank you.

A second review was conducted following the initial review as described above for which I was not involved. That review was to determine whether or not any of the staff's conclusions or their principal bases as presented at the TMI-1 restart hearings needed to be amended in light of information contained in the lawsuit record. Specifically, the Commission directed the staff to include the subject of "management competence/integrity" within its review of the GPU v. B&W lawsuit documents. This subject was not included in the Commission's original Order and Notice of Hearing on the TMI-1 restart proceeding.

The second review contained information in seven areas relating to management competence/integrity requiring further investigation before the staff can make a decision regarding the revalidation of its position on management integrity.

In summary, I believe only one commissioner believed the review should have had more input from the Office of the General Counsel. My view is that this episode does not in any way reflect adversely on my competence to manage the Department of Energy complex.

QUESTIONS SUBMITTED BY SENATOR SLADE GORTON

SAVANNAH RIVER RESTART

Senator GORTON. The Secretary has stated on numerous occasions, and I agree, that compliance with modern health, safety, and environmental standards is absolutely critical in re-establishing public confidence in the Department's defense nuclear activities. In this regard, based on your extensive experience at the NRC, please give us your views on: The extent to which this can be achieved with the existing reactors at Savannah River and areas where exceptions to the NRC's standards for current generation commercial nuclear power plants will be necessary; and the magnitude of the "cultural" problem at Savannah River and the how it compares to the problems that led the NRC to shut down commercial nuclear power plants (e.g., TVA, PECo., etc.).

Mr. STELLO. With regard to the extent to which the Savannah River reactors comply with the NRC's standards for current generation commercial nuclear power plants, it is important to note that the Savannah River reactors were designed and constructed in the early 1950s timeframe and therefore literal compliance with design codes, standards, and criteria used for current generation nuclear power plants is not possible. The SRS reactors were designed and constructed before the advent of the newer standards used for current generation nuclear plants. Consequently, it is not possible to alter fundamental design criteria, construction practices, and testing once the reactors have been built and operated. This should not prevent us from upgrading the capabilities of the design to provide more confidence in the adequacy of the design margins available to meet the intent of today's commercial standards. The Savannah River reactors are presently being modified consistent with this approach.

The TMI-2 accident in 1979 taught us that much more attention had to be given to the human factors including management, operations, training, procedures, staffing, and engineering. The major highlights in the Kemeny and Rogovin Commission Reports reinforced this finding. While human performance and management involvement are difficult to measure quantitatively, as one would measure the adequacy of design calculations or safety analyses, they do have a critical affect on safety performance. Competent and experienced management provides an environment, we have come to call it a safety culture or mindset, where there is a demonstrated capability to respond to problems, take effective countermeasures, and undertake initiatives to foster critical self-assessment. In this regard, it is essential that the Department of Energy apply the improved standards used in the commercial sector for fostering operational safety.

The "cultural" problem at Savannah River is similar to that experienced at several commercial utilities such as Philadelphia Electric or the Tennessee Valley Authority. Attributes of this problem include unclear lines of communication and responsibilities, failure to implement technical and management improvements on a timely basis, inadequate procedures, inadequate training, and a general need for upgrading the quality of the conduct of operations and safety culture. The changes discussed in the response to Question 1 in the November 6, 1989, letter from Senator Nunn, the contractor and the DOE organization changes in terms of line management responsibility and accountability, critical self-evaluation and assessment, and improvements in DOE and contractor employee skills and qualifications are consistent with those actions taken at various utilities in order to bring about cultural changes.

MODERNIZATION OF THE DEFENSE PRODUCTION COMPLEX

Senator GORTON. The "2010" study was prepared before the Savannah River, Rocky Flats, and Fernald sites where shut down for safety and environmental problems. Further, the Secretary has stated that this plan was too expensive, needed to be reexamined, and put on a more fiscally sound basis.

What is the scope, schedule and status of the Department's revised modernization plan? Is Hanford being considered as a future production site? If not, why not? What approaches are being examined to reduce the cost of modernization? What are the effects of the problems at Savannah River, Rocky Flats, etc., on the urgency to proceed with modernization?

Mr. STELLO. The modernization study, as transmitted to Congress on January 12, 1989, is being restudied. On September 29, 1989, the Secretary of Energy established a review committee reporting to the Under Secretary for the new study. This review is currently underway.

I agree that the study needs to be redone. The study did not address some serious environmental and waste management issues and some of the assumptions used in the study were unsatisfactory. For example, the need for redundancy of critical weapons complex facilities was not addressed.

THE GAO REPORT

Senator GORTON. Are you familiar with the recently completed GAO report titled "Better Information Needed for Selection of New Production Reactors"? The main conclusion that I draw from the report is that while our existing tritium producing facility at Savannah River faces continued problems and uncertainty, the DOE's proposed NPR acquisition strategy raises even more serious questions by ignoring the quickest, most cost-efficient option that is available. What is your reaction to the report? Has there been an official response by the DOE to the report?

Mr. STELLO. I have only limited knowledge about the DOE efforts on the selection of the New Production Reactors because these efforts are performed outside Defense Programs in the Office of New Production Reactors (NPR). That office reports to the Secretary of the Department of Energy and has the programmatic responsibility for the new acquisitions.

I am aware of the DOE acquisition strategy as contained in the report of August 1988. As I discussed in my response to question 10, in the November 6, 1989, letter from Senator Nunn, I am convinced of the urgent need to design and construct at least two New Production Reactors, preferably of different designs.

I have not had an opportunity to review the GAO report titled "Better Information Needed for Selection of New Production Reactors" nor am I aware of the plans the Office of New Production Reactors has for responding.

ADDITIONAL INFORMATION SUPPLIED FOR THE RECORD BY MR. STELLO

THREE MILE ISLAND

As a preamble to answering the specific questions that were raised by Senator Tim Wirth, I need to clarify my involvement in connection with the accident at Three Mile Island.

Answer. When the accident occurred, I was the Director of the Division of Operating Reactors within the Office of Nuclear Reactor Regulation and, as such, was not responsible for the inspection, investigation, and enforcement activities at the agency. These responsibilities resided in the Office of Inspection and Enforcement. My assignment in connection with the accident was to be the responsible officer for managing the Nuclear Regulatory Commission's response to the recovery of the Three Mile Island accident. Separate from these responsibilities, an investigation into the accident was initiated, and to the best of my recollection it was started sometime in April 1979 by the Office of Inspection and Enforcement. That investigation was conducted separately from the activities I was involved in.

FIRE PROTECTION REGULATIONS

Did you, as EDO of the NRC, direct attorneys to revise the fire protection regulations or provide other relief for utilities?

Answer. No. The fire protection issue was raised as a result of inconsistent application of the fire protection regulations by the NRC staff. The NRC attorneys were requested to initiate a review of the problem to determine what appropriate regulatory action was necessary to provide a consistent level of fire protection. The special attorneys involved were Mr. William Shields with the law firm of Bishop, Cook, Purcel and Reynolds and Mr. William Olmstead with the Administrative Conference of the United States. I suggest that they be telephonically contacted to confirm the fact in this matter.

SEABROOK EMERGENCY PLANNING ISSUE

As related to the Seabrook emergency planning issue, please describe your personal involvement.

Answer. The Seabrook licensing issue is another clear example of where I am being personally criticized for those actions taken by the NRC as an independent agency fulfilling its regulatory responsibility. However, regarding the questions raised relating to meetings with Seabrook management, FEMA, and others, a substantial amount of information has recently been provided to Senator Humphrey and is attached for your information. The backup material is not included in this attachment. The issue of coziness with the nuclear industry has been reviewed. Specifically, the House Subcommittee on General Oversight and Investigations reviewed this issue and the minority view on that report states:

> The Minority would like also to disassociate ourselves from remarks wherein allegations against Commissioners and the Commission are voiced but not proven. We find that the report is overly critical and in some instances vicious. We also believe that all allegations against Commissioner Thomas Roberts are unproven and if doubts remain, the matter should be referred to the Department of Justice. We do not agree that he has been proven guilty of malfeasance.

[Information referred to follows:]

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

OCT 2 1989

The Honorable Gordon J. Humphrey
United States Senate
Washington, D.C. 20510

Dear Senator Humphrey:

I am responding to your September 26, 1989, letter in which you raised several questions concerning my involvement in the Federal Emergency Management Agency's (FEMA) change in position regarding the adequacy of the State of New Hampshire's emergency plans for Seabrook area beach populations. Two independent bodies have reviewed the details of the events which led to the FEMA change in position. Both of these third party reviews concluded that FEMA reached its decision independently, without undue interference or pressure from NRC officials.

On December 30, 1988, the Atomic Safety and Licensing Board, after hearing testimony from senior FEMA officials, issued a Partial Initial Decision on the New Hampshire Radiological Emergency Response Plan which stated:

> "The Board found no basis whatever to support a charge that FEMA's change in position was a result of political pressure or NRC threats -- or that such pressure or threats ever existed. Rather, FEMA's change was brought about by a thorough evaluation of the technical, regulatory and legal issues involved."

Similarly, the General Accounting Office (GAO) issued a report on February 18, 1989, regarding FEMA's position concerning the adequacy of the emergency response plan for the Seabrook Nuclear Power Plant in which the GAO concluded that "...the record in this matter demonstrates that various programmatic, technical, and legal factors caused FEMA to determine that the New Hampshire plan met FEMA's emergency planning regulations for the beach population....The record also shows that FEMA reached this determination on the basis of its own deliberations and information provided by an outside consultant, the state, and NRC."

Responses to the specific questions raised in your letter, along with relevant documentation, are enclosed. I am confident that after you have reviewed the facts of the matter, you will agree with the conclusions of the Atomic Safety and Licensing Board and the GAO.

Sincerely,

Victor Stello, Jr.

Victor Stello, Jr.
Executive Director for Operations
(on detail to DOE)

Enclosures:
As stated

Question 1. On what date did you first become involved in the emergency evacuation planning process for the Seabrook facility?

Answer. On January 2, 1986, I became the Acting Executive Director for Operations of the U.S. Nuclear Regulatory Commission (NRC) and as such, assumed responsibility for the oversight of the staff's review of all licensing activities related to the Seabrook nuclear power plant. These licensing activities involved the operation of commercial nuclear power plants in the U.S., including the adequacy of the emergency plans for the Seabrook facility. I do not specifically recall when I first became personally involved in the emergency planning process for the Seabrook facility. However, I became aware of the beach population issues in detail in January 1988, and telephoned the FEMA Associate Director for State and Local Programs and Support, Mr. Grant Peterson, on January 15, 1988, to set up a meeting between NRC staff and FEMA officials. A meeting was subsequently held on January 19, 1988, at which time issues involving both the Seabrook and Shoreham plants were discussed.

Since 1986, I also attended meetings at which other Seabrook licensing issues were discussed. For example, I participated in a March 1987 public meeting between the NRC and the Seabrook owners concerning their request for an exemption from the requirement that there be a 10-mile emergency planning zone.

Question 2. When were you first made aware of the FEMA official position filed with regard to Seabrook licensing in June 1987 that the New Hampshire RERP does not provide a "reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency?"

Answer. FEMA's June 1987 position was discussed at the January 19, 1988, meeting between NRC and FEMA officials, and was made known to me by NRC staff members prior to that meeting. However, I cannot specifically recall when I first received information regarding this issue.

Question 3. Did you discuss the FEMA position with any other official of the Federal government, including FEMA, or the State of New Hampshire, on or after June 1987? If so, please give the date and nature of the discussion and with whom the discussion was held.

Answer. On January 15, 1988, I telephoned Mr. Grant Peterson to arrange a meeting between NRC staff and FEMA officials. On January 19, 1988, a meeting was held which involved the following participants:

NRC: Victor Stello, Jr., Executive Director for Operations; James M. Taylor, Deputy Executive Director for Regional Operations; Thomas E. Murley, Director, Office of Nuclear Reactor Regulation; Edward L. Jordan, Director, Office for Analysis of Operational Data; William J. Olmstead, Assistant General Counsel for Hearings; Frank J. Congel, Director, Division of Radiation Protection and Emergency Preparedness; and David B. Matthews, Chief, Emergency Preparedness Branch.

FEMA: Grant C. Peterson, Associate Director, State and Local Programs and Support; Dave McLoughlin, Deputy Associate Director, State and Local Programs and Support; H. Joseph Flynn, Assistant General Counsel; George Watson, Attorney, OGC; William R. Cumming, Attorney, OGC; Richard W. Krimm, Assistant Associate Director, State and Local Programs and Support; Craig Wingo, Chief, Field Operations Branch; and Margaret Lawless, Emergency Management Specialist.

No transcript was made of the January 19, 1988 meeting, and a meeting summary was not developed by the NRC. Two of the NRC participants took notes and these are enclosed in response to Question 7, as are notes prepared by FEMA meeting participants. The discussions during the meeting addressed various emergency planning matters, including the Seabrook beach population issue. The regulatory requirements, and technical issues involved in developing adequate emergency plans for the beach population, were discussed. FEMA management accepted the NRC staff's interpretation of NRC regulations pertaining to the need for sheltering, effectively foreclosing the possibility that the two agencies would proceed to hearing with differing positions. FEMA officials indicated that they were not ready to make a final finding on the adequacy of the beach portion of the Seabrook emergency response plan and that FEMA needed more information.

I have not had any discussions with anyone from the State of New Hampshire regarding the FEMA position on or after June 1987.

Question 4. Did you direct, authorize, or require any official from the NRC to take any action, pursue any question, or suggest any change with regard to the FEMA position as released in June 1987, or the FEMA position as refiled in September 1987? If so, what action did you direct, authorize, or request?

Answer. I authorized attorneys, in the Office of the General Counsel, to prepare to respond to FEMA's initial position of June 1987. This resulted in the filing of an outline of proposed rebuttal in October 1987, the preparation of draft NRC staff testimony, and preparation for cross-examination of FEMA witnesses.

Question 5. Please list all contacts between you or any other member of the NRC staff with officials of FEMA regarding evacuation planning at Seabrook. Please provide detailed information about the nature of the contact and what transpired.

Answer. As discussed in response to questions 1, 3, 6 and 9, I have had contact with FEMA officials on January 15, 19 and March 10, 1988. At various times over a relatively long period, various members of the NRC and FEMA staffs have discussed the adequacy of protective measures for the Seabrook beach population as part of the overall emergency planning review process for Seabrook. Such discussions have included in numerous meetings of the FEMA-chaired Regional Assistance Committee in which NRC Region I staff participated, and at several regular meetings of the NRC/FEMA Steering Committee, which was established to resolve offsite emergency preparedness issues. The NRC employees who have participated in such discussions have included staff and management from the NRC Region I office and from NRC headquarters. These communications were conducted pursuant to the Memorandum of Understanding between our two agencies and in accordance with our statutory responsibilities. The discussions were not recorded and individual notes have not been identified. The details of the January 19, 1988 meeting between NRC staff and FEMA officials are discussed in response to Question 3. Documents concerning these matters as related to the beach population issue, are produced as response to question 7.

Question 6. In a deposition of Ed Thomas, a former FEMA official deeply involved in the Seabrook proceedings, he testified of a meeting held on January 19, 1988 at which you were alleged to have stated that the NRC would "engage in total war with FEMA if we [FEMA] didn't change our testimony in the beach population." Curiously, the Boston Globe reported on March 18, 1988: "Victor Stello, the NRC's top safety official, confirmed that 'Our attorneys and [FEMA's] attorneys worked together in the Seabrook case.' He said that his only involvement was a week ago, when he got a call from [FEMA Director Grant] Peterson advising him that FEMA was about to file testimony reversing its position. 'I got it, read it . . . and it sounded fine to me,' Stello said."

A. How do you reconcile these conflicting accounts?

Answer. The statement by Mr. Thomas in a deposition taken in April 1988 was a hearsay account of a meeting between FEMA and NRC officials in Washington, D.C. on January 19, 1988. Mr. Thomas did not attend the meeting but based his statement on an account of the meeting he received from another FEMA employee who had attended the meeting. The three principal senior FEMA officials who attended the meeting disagreed with the substance of Mr. Thomas' hearsay account of the January meeting in general and with his account of my remark. This discrepancy has been documented in the ASLB's Partial Initial Decision and in the GAO's Report on the FEMA change in position regarding the New Hampshire Radiological Emergency Response Plan.

At the time of the January 19, 1988 meeting, FEMA officials indicated that they were not ready to make a final finding on the adequacy of the beach portion of the New Hampshire emergency response plan and that FEMA needed more information. Additional information was provided to FEMA on February 11, 1988, by the State of New Hampshire.

On or about March 10, 1988, Mr. Peterson advised me that FEMA was about to file testimony changing its position. This was the first indication to me that FEMA had made a decision on the issue. The quote attributed to me in the March 18, 1988 Boston Globe article is taken out of context, and refers to my knowledge of FEMA's prefiled written testimony concerning FEMA's change in its position.

B. What was the extent of your personal involvement in discussions with FEMA on Seabrook emergency planning negotiations prior to March 1988?

Answer. I attended a meeting between NRC staff and FEMA officials on January 19, 1988. The list of attendees and a summary of the discussion is contained in response to Question 3.

Question 7. Please provide copies of all NRC documents relating to negotiations or discussions with FEMA on emergency planning at Seabrook, including transcripts of meetings or notes from meetings involving officials from the two agencies.

Answer. A list of relevant documents is provided as Enclosure 1. Copies of relevant documents are enclosed herewith, with the exception of documents withheld as privileged attorney work product in ongoing litigation or as privileged attorney client communications. In addition, extensive testimony by FEMA and regional NRC officials concerning these matters was provided over the course of many days in the Seabrook operating license proceeding; copies of the transcripts of that testimony will be provided upon request.

1. Memorandum for Chairman Zech and Commissioners from V. Stello, Jr., March 13, 1989, enclosing letter from K.O. Fultz, General Accounting Office, to the Honorable John Conyers, Jr., Chairman, House Committee on Government Operations, February 28, 1989.

2. Memorandum for G.C. Peterson, FEMA, from J.T. Thiede, FEMA, March 7, 1989, enclosing letter from K.O. Fultz, GAO, to the Honorable John Conyers, Jr., Chairman, House Committee on Government Operations, February 28, 1989.

3. Partial Initial Decision, *Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), LBP-88-32, 28 NRC 667 (1988), NRC Atomic Safety and Licensing Board, December 30, 1988 (reproduced in relevant part).

4. Summary of Entrance Conference (July 14, 1989), GAO/NRC, re "FEMA and the Seabrook Plant," August 29, 1988.

5. Memorandum for G. Watson, FEMA, from J.R. Lilley, II, FEMA, May 23, 1988, enclosing copy of FEMA building entry records, January 19, 1988.

6. Four sets of handwritten notes, S.E. Turk, NRC OGC, re various conversations with NRC staff members concerning FEMA/NRC meeting of January 19, 1988, May 9–26, 1988 (copies withheld from disclosure by reason of the attorney-client communication privilege and the attorney work product privilege).

7. Letter to I.W. Smith, et al., NRC Atomic Safety and Licensing Board, from H.J. Flynn, FEMA, May 12, 1988, enclosing FEMA documents.

8. "Talking Points for Stello Meeting," FEMA, undated.

9. Notes from FEMA/NRC meeting of January 19, 1988, by an NRC meeting participant, 2 pp. (reproduced in relevant part).

10. Notes from FEMA/NRC meeting of January 19, 1988, by an NRC meeting participant, 5 pp. (reproduced in relevant part).

11. Letter from R.J. Bores, NRC Region I, to E.A. Thomas, FEMA Region I, June 4, 1987.

12. Letter from R.J. Bores, NRC Region I, to E.A. Thomas, FEMA Region I, February 18, 1987.

13. Letter from J.C. Bradburne, NRC, to the Honorable John Glenn, Chairman, Senate Committee on Governmental Affairs, June 27, 1988, with index and 28 attached documents (as indicated, items 16 and 20 witheld from disclosure by reason of the attorney work product privilege).

Question 8. Mr. Thomas has also testified that then-FEMA Assistant General Counsel Flynn told him during the week of January 18, 1988, that "FEMA, in essence, was doing a 180-degree shift in its position with respect to the Seabrook beach population . . . that this had been promised at a meeting with the NRC's Victor Stello."

A. Are you aware of such an agreement?

B. Were you a direct party to such an agreement?

C. If such an agreement were entered into, please cite the legal basis for it, including how such an agreement would be consistent with FEMA's obligations under emergency planning regulations.

Answer. I am not aware of any such agreement. During the January 19, 1988, meeting between NRC staff and FEMA officials, FEMA officials indicated that they were not ready to make a finding on the adequacy of the beach portion of the Seabrook emergency response plan and that they needed more information. Since FEMA did not have sufficient information to come to a position with respect to the Seabrook beach population, no such "180-degree shift" in position was promised at the January 19, 1988 meeting.

Question 9. Testimony indicates that on January 15, 1988, you telephoned the FEMA Associate Director for State and Local Programs and Support, Grant Peterson, and that you "showed concern" about what you had heard of FEMA's testimony with regard to Seabrook (On January 13, FEMA counsel had indicated to Judge Smith that FEMA would be sticking with its original position with regard to the adequacy of emergency plans).

A. Who reported to you on the January 13 FEMA testimony to Judge Smith?

Answer. NRC staff counsel present at the hearings in New Hampshire telephoned me with regard to FEMA counsel's transcribed statement of Judge Smith and the Atomic Safety and Licensing Board.

B. Please give your account of this conversation with Mr. Peterson and specify the nature of your "concern[s]".

Answer. The purpose of the January 15, 1988 telephone call to Mr. Peterson was to set up a meeting between NRC staff and FEMA officials to discuss both the Seabrook and Shoreham plants. I was concerned that two Federal agencies were interpreting the same Federal regulations differently. I cannot recall the specific language used by Mr. Peterson or me during the course of the conversation.

[Information referred to follows:]

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

November 16, 1989

The Honorable Gordon J. Humphrey
United States Senator
Washington, D.C. 20510

Dear Senator Humphrey:

I am responding to your letter dated November 8, 1989, in which you asked additional questions regarding my involvement with the Seabrook nuclear power plant. The responses to your questions are enclosed.

Sincerely,

Victor Stello, Jr.
Executive Director for Operations
(on detail to DOE)

Enclosure:
As stated

Question 1. You have stated that you "do not specifically recall" when you first became personally involved in the emergency planning process for the Seabrook facility. However, you did become aware of the beach population issues "in detail in January 1988".

A. What is the earliest date which you do recall being involved in the emergency planning process at Seabrook?

Answer. As I indicated to you in my response of October 2, 1989, I do not recall a specific date when I become involved in the Seabrook Emergency Planning Program. You will note, however, in my response to Question 1 that the Nuclear Regulatory Commission and the Seabrook owners had a public meeting that I attended concerning their requirements from the exemption that there be a 10-mile Emergency Planning Zone. Clearly I would have been discussing this issue with the staff prior to that meeting but unfortunately, I cannot recall specific dates when this may have occurred. I also did note in my earlier response that since 1986, I also attended meetings, at which Seabrook licensing issues were discussed. Finally, as you are aware, I was appointed as the Executive Director for Operations on January 2, 1986. As the Executive Director, I would have been made aware of issues related to all 122 nuclear power plants which would include Seabrook. While again, I cannot recall a specific date, I would expect through periodic staff meetings, status reports and correspondence, that I at least would have been made aware of the issues.

B. Please specifically list your involvement, and provide notes and records, with respect to discussions you had with Seabrook owners, FEMA staff and NRC staff regarding the one-mile emergency planning zone (which had been proposed in 1986)?

Answer. Review of my records indicates that I had the following interactions in which the one-mile emergency planning zone for Seabrook was or could have been discussed.

06/20/86—Phone call from Derrickson (Sr. YP, PSNH) to Stello to discuss a number of issues related to Seabrook.[1]

06/24/86—Meeting in Bethesda between Derrickson and Stello, Thompson, Novak, and Cunningham to discuss a number of issues related to Seabrook.[1]

07/10/86—Phone call from Derrickson to Stello.[1]

07/15/86—Phone call from Derrickson to Stello.[1]

09/02/86—Phone call from Derrickson to Stello.[1]

10/14/86—Telephone conversation between Stello and Derrickson.[1]

11/03/86—Telephone conversation between Stello and R. Sweeney (PSNH Bethesda Licensing Rep).[1]

11/04/86—Telephone conversation between Stello and Derrickson.[1]

11/19/86—Telephone conversation between Stello and Derrickson.[1]

12/04/86—Meeting with Stello, Vollmer, and Novak on Seabrook emergency planning and congressional mail.[1]

12/04/86—Telephone conversation between Stello and Derrickson.[1]

12/16/86—Meeting with Derrickson, Stello, Vollmer, Christenbury and Noonan on matters concerning Seabrook (see enclosed notes).

12/24/86—Telephone conversation between Stello and Derrickson.[1]

01/16/87—Meeting among Stello, Scinto, Murray, Denton, Vollmer, Novak, Jordan, Noonan (and others) to discuss staff schedule.[1]

01/27/87—Meeting among Stello, Scinto, Novak, and Noonan to discuss staff response to ASLB.[1]

03/11/87—Pre-brief, Seabrook Public Meeting, with NRR, OGC.[1]

03/18/87—Meeting between PSNH and NRC staff to discuss Seabrook licensing issues (see enclosed transcript).

Enclosures: As stated.

C. Did you ever counsel, advise or otherwise make suggestions to Seabrook owners regarding any submission made to the NRC? If so, please provide details.

Answer. It is not unusual for the staff to provide advice to the licensees on how to comply with NRC regulations. This is particularly likely in meetings with the licensees to discuss resolution of technical and scheduling issues. I am enclosing transcripts of two such public meetings with the Public Service Company of New Hampshire on March 18, 1987, and December 22, 1987 (Enclosures 1 and 2). This issue was also discussed at a January 16, 1987 meeting between Congressman Markey's staff and Messrs. Denton, Parler, Scinto, Kammerer and myself (see transcript at Enclosure 3).

Enclosures: As stated.

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[1] No notes, logs or records of conversation were kept.

Question 2. On Wednesday, January 13, 1988 FEMA's Assistant Counsel Joseph Flynn told the ASLB hearing that he had "talked with people in Washington since then [Tuesday, January 12] and I mean again, I am not prepared to say what the details will be, but I have gotten a very clear indication that the position he will be taking is that which we have already stated." In other words, on that date, FEMA was reiterating its position with regard to the adequacy of the emergency plans.

A. Did this statement prompt you to call Mr. Peterson on January 15 to arrange a meeting between FEMA and the NRC?

Answer. No, this statement did not prompt me to call Mr. Peterson on January 15 to arrange a meeting between FEMA and the NRC. See response to Question 2(B).

B. If not, what did prompt you to call Mr. Peterson on this date?

Answer. On January 11 and 12, 1988, Mr. Flynn, FEMA counsel, indicated before the Licensing Board that FEMA was reconsidering its prior prefiled testimony that the plans were inadequate, and that its position might well change (although this was still uncertain)—and that FEMA's reexamination of its position was being driven by legal considerations as to the proper interpretation of NRC and FEMA regulations and regulatory guidance. He further stated:

"I want to respond to the suggestion that pressure is being put on FEMA from outside sources to change its position. The pressure to reexamine this is coming from within FEMA, and frankly, some of it is coming from me. I have been pushing the policy makers in FEMA to clarify their thinking on these issues, and that is what is going on."

These statements led many parties present at the hearings to believe that FEMA was about to revise its position. On January 13, 1988, however, Mr. Flynn provided a different report to the Board, indicating that FEMA's revised position was not going to be very different from its prior position.

When I learned from staff counsel the details of Mr. Flynn's statements and of the staff's existing litigation plans, I determined that a meeting with FEMA management was necessary in order to avoid a litigative confrontation between our two agencies. It was for this reason that we called FEMA.

Question 3. You have stated that at the meeting, "FEMA officials indicated that they were not ready to make a final finding on the adequacy of the beach portion of the Seabrook emergency response plan and that FEMA needed more information." How do you explain this in light of Mr. Flynn's statement, on the record, less than one week earlier (quoted above)?

Answer. Reconciliation of Mr. Flynn's statement with statements later made by other FEMA officials should be addressed by FEMA. I would note that the FEMA position on this matter was thoroughly discussed in a hearing before the Atomic Safety and Licensing Board on May 25, 26, and 27, 1988. A transcript of that hearing is enclosed.

Question 4. You stated that you directed attorneys in the Office of the General Counsel to prepare to respond to FEMA's initial position of June 1987. How did you direct them to respond? Did you direct them to respond in opposition to the FEMA position?

Answer. In my response to your questions of September 26, 1986 (Question 4), I indicated that I "authorized"—not that I had "directed"—attorneys in OGC "to prepare to respond to FEMA's initial position of June 1987." I did not "direct" OGC attorneys to take any particular action. Litigation plans and strategies were developed by OGC attorneys working with the technical staff without my specific direction.

Question 5. Did you raise any reference at all to "total war" at the January 19 meeting?

Answer. I do not recall making a reference to "total war" or "war" at the January 19, 1989 meeting. This version of my statement was testified to by a FEMA employee who was not present at the January 19 meeting, based on an account of the meeting he claimed to have received from another FEMA employee. Other FEMA officials who were present at the meeting testified at the Licensing Board hearings. These officials disagreed with Mr. Thomas' account of my statement, although they did recall my use of the word "war" in the context of how the NRC would respond if FEMA interpreted NRC regulations as requiring the provisions of shelters. I do remember strongly challenging FEMA's assumption that shelters were required for the Seabrook beach population by NRC regulations. A more comprehensive response to this question was provided to Congressman Udall on September 12, 1988 (see enclosure).

FORTUNA INVESTIGATION

There was considerable discussion and testimony regarding the "Fortuna Investigation." Most of this record tends to confuse the two distinct parts of the investigation. First, the investigation regarding possible wrongdoing of Mr. Fortuna himself was a matter delegated to the independent Office of Inspector and Auditor for which, as Executive Director for Operations, I had no authority to direct or interfere with such investigations. A second part, related to information obtained as part of that investigation, dealt with safety issues which, as Executive Director for Operations, I was fully responsible for. As I have explained in previous testimony, there were safety issues which I believed were important and had to be pursued. As I explained in my testimony before Congressman Kostmayer, in retrospect, the issue regarding alleged drug use should have been pursued faster.

As I reflect on the year and a half of this investigation, it is clear to me and, as testified to by Mr. Parler, it would have been better had this investigation been conducted by someone other than the Office of Inspector and Auditor. I am not aware of testimony which suggests that the safety issues ought not to have been pursued. On the other hand, there seems to be a spectrum of judgment as to whether the issue of possible wrongdoing should have been pursued at all. I can understand how reasonable people might reach different judgments on this issue. However, whether, and to what extent, Mr. Fortuna may have engaged in wrongdoing will not be known until this investigation is complete. At this time, the investigation is still open and ongoing. I am convinced, however, that based on the following conversation taken from a transcript in the public domain filed by Mr. Comley in U.S. District Court in Massachusetts between Mr. Fortuna and Mr. Comley that there is a legitimate need for an answer:

COMLEY. Okay. Hadley with me. Look, be absolutely with the Woplav Case. Don't mention it to anybody.

FORTUNA. I have not said a f***ing [1] word, man.

COMLEY. Okay. Don't—don't even have it in your possession.

FORTUNA. All right, then I'll get it the * * * out of my office, tomorrow.

COMLEY. Okay.

FORTUNA. It's not in the office files, you know what I mean, it's in my room.

COMLEY. Yeah.

FORTUNA. I'll take it out of there tomorrow.

COMLEY. Yeah. Okay.

FORTUNA. You know that Sh** you sent me, I got it at work and I was reading it last—I'll bring it back.

COMLEY. Okay.

FORTUNA. I haven't said one god****** word.

COMLEY. Bring it home and look at it, keep looking at it.

FORTUNA. All right.

This same case is the subject of a further exchange between Comley and Fortuna later during the conversation on page 146 of the transcript:

COMLEY. All right. Okay. See you, kid. Is there anything you want to ask me, or whatever?

FORTUNA. Not really.

COMLEY. All right. But the WOP/ER case——

FORTUNA. No, I haven't said, I haven't—you told me, I did it.

The quoted conversation suggests that Mr. Fortuna's commitment to remove the "woplav" case from his office could have resulted in the NRC being denied safety information. If, in fact, that information or file was destroyed, it would suggest to me a very serious transgression of responsibilities of a Federal employee. I do not suggest that I know for a fact that this is the case, but that simple conversation certainly suggests that it is possible and an answer is urgently needed. Possible public health and safety issues demand an answer. In all of the testimony and discussion that I am aware of, I have found nothing which would suggest that this issue should not have been nor should not continue to be investigated.

In simple terms, if the information in the "woplav" case included safety issues which could adversely affect worker or public safety, then I doubt that anyone would question the effort being expended to obtain the information.

---

[1] Expletives deleted.

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

November 13, 1989

The Honorable Sam Nunn
Chairman, Committee on Armed Services
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Under separate cover, I have forwarded for your review a report in which I have assembled responses to various statements made by critics. The fourteen responses provide factual information, with relevant backup documents which I believe demonstrate that the various allegations are not substantiated.

As we all know, judgments and decisions regarding nuclear power should be scrutinized in detail and in many cases are controversial. I know, as a regulator in the Nuclear Regulatory Commission, that I have been forced to make tough decisions. In establishing backfitting requirements for nuclear power plants, for example, expensive hardware fixes were sometimes required. Industry groups believed that I had gone too far. Critics believed I had not gone far enough. I faced the same criticisms when I was the head of the Office of Inspection and Enforcement and levied fines against the operators of nuclear plants. I believe this is a fundamental characteristic inherent in the regulatory oversight of any controversial issue. It is especially true for nuclear power, particularly with the heightened sensitivity brought on by the Three Mile Island accident in 1979 and the Chernobyl accident in 1986.

I would appreciate your review of this material and will be happy to answer any questions you have.

Sincerely,

Victor Stello, Jr.

Victor Stello, Jr.
Executive Director for Operations
(on detail to DOE)

MAR 13 1990
EXAMINED AND APPROVED
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ITEM A

Fire Protection Issues

1. Allegation - Fire Protection

Instructed an NRC attorney to prepare an "interpretation" of the NRC regulations that would satisfy the utilities.

Response -

The statement is incorrect. Ample evidence existed that the fire protection rule was not clear and was being interpreted in various ways by various parties, including NRC and the licensee. Attached is a letter to Congressman Sam Gejdenson, dated August 11, 1987, in which I provided a statement for the record of the hearing concerning fire protection issues held on June 11, 1987. My letter explains the process used in revising agency guidance related to fire protection regulations. As is evident from the attached letter, it was essential to provide further guidance in the interpretation of the regulations in order to correct safety problems. This conclusion was reaffirmed by the Commission in its letter to Congressman Gejdenson dated September 30, 1987 (also attached) in which the Commission concludes:

> An independent Office of the General Counsel (OGC) legal analysis of Appendix R fire protection demonstrated that past interpretations were not always in accord with the original intent of the regulation. Accordingly, the Commission agrees that there was a need to reconsider the previous NRC

interpretations of its fire protection regulations.

2. Allegation -

The new interpretation of the fire protection role was issued in 1985 without being offered for public notice and comment.

Response -

This statement is untrue. By August 27, 1984, the previous Executive Director for Operations had formed a Steering Committee, consisting of headquarters legal, regional and NRR staffs, to conduct a comprehensive review of current fire protection issues. As a result, the Steering Committee developed specific recommendations which were published in the Federal Register for public comment in January 1985. In light of the public's comments, and with revisions, the Commission approved the issuance of the interpretations of the Appendix R rule in a Generic Letter 86-10 on April 24, 1986.

3. Allegation -

NRC's fire protection engineers protested that the new interpretation made it impossible for them to do their job.

Response -

Six NRC staff personnel involved in fire protection reviews filed Differing Professional Opinions in 1984. Their concerns were included in developing the revised guidance and interpretations before Commission approval in 1986. That revised guidance was in accordance with agency procedures.

CHAIRMAN

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

September 30, 1987

Cys: Stello
Taylor
Rehm
Murley
Beckjord
Thompson
Murray
Jordan
Lieberman
EDO R/F

The Honorable Sam Gejdenson, Chairman
Subcommittee on General Oversight
and Investigations
Committee on Interior and Insular Affairs
United States House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

In a recent letter to the Commission you indicated an interest in whether the Commission endorsed Victor Stello's August 11, 1987 reply to issues raised in the June 11, 1987 Subcommittee hearing. Mr. Stello's letter addressed in some detail four subjects covered at the hearing.

It would not be appropriate for the Commission itself to comment on the actions by NRC Region IV in regard to the Comanche Peak Nuclear Plant. This is because safety issues regarding Comanche Peak are pending before an Atomic Safety and Licensing Board in a contested, formal adjudicatory proceeding in which the Commission itself may eventually need to make the final decision, and because these matters are also the subject of an ongoing, independent investigation. On the other hand, it is not inappropriate for Mr. Stello, as a member of the NRC staff, to comment on this matter.

The Commission has confidence in Mr. Stello's professional ability and believes that Mr. Stello's discussion of the other three subjects is in accord with the Commission's regulatory policies.

An independent Office of the General Counsel (OGC) legal analysis of Appendix R fire protection demonstrated that past interpretations were not always in accord with the original intent of the regulation. Accordingly, the Commission agrees that there was a need to reconsider the previous NRC interpretations of its fire protection regulations.

The Commission carefully considers whether reliance on industry initiatives is the appropriate method for achieving regulatory goals. One important regulatory goal is to assure that persons operating nuclear power plants are fit for duty and are not impaired by drug use, alcohol use, or any other factor. The Commission continues to believe that the fastest way to have the industry begin to address this issue was the policy statement issued last year. As indicated in that statement, this does not foreclose issuance of a rule by the NRC. The NRC may determine after the initial 18-month trial period that the policy statement needs to be supplemented or replaced by a rule. That does not detract from the fact, however, that the policy statement has fostered prompt consideration of the drug issue at most utilities. A rulemaking process would have taken some time to complete and there is little reason to believe it would have achieved quicker or better results. Also, as Mr. Stello stated, the Commission decision to proceed by way of a policy statement was based in important part on the belief that the lack of new regulations specifically addressing alcohol and drug abuse at nuclear power plants did not legally disable the Commission from taking effective regulatory action should alcohol or drug abuse impair the safety of any particular plant. The Commission's Legal Office has consistently supported this reading of the Commission's authority.

As for the Fermi matter, the analysis of the Fermi OI report was, to the best of the Commission's knowledge, a good faith effort to analyze the strength of the enforcement case presented in the OI report. Such an analysis is appropriate, especially considering that the licensee is entitled to a formal hearing under the Atomic Energy Act, in which the NRC staff has the burden of going forward with a sufficient case.

Mr. Stello also discusses the proposed rule on completeness and accuracy of information. The Commission has not yet taken final action on that proposal. The public comment period has ended and the staff is preparing an analysis of the comments received. The Commission will be considering appropriate action on the proposed rule after the staff analysis is complete.

Commissioner Rogers did not participate in this response.

Sincerely,

Lando W. Zech Jr

Lando W. Zech, Jr.

cc: Rep. Denny Smith

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

Fire Protection
Fitness for Duty
Fermi II

August 11, 1987

The Honorable Sam Gejdenson, Chairman
Subcommittee on General Oversight
and Investigations
Committee on Interior and Insular Affairs
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am appreciative of the opportunity you have offered me to provide a statement for the record of the hearing held by your Subcommittee on June 11, 1987. I have attached for your convenience as enclosures an expansion of my comments in several key areas.

The principal issue of discussion at the hearing regarded fire protection. The comments of members of the Subcommittee were focused on whether the NRC placed the economic costs to licensees over safety requirements. In my experience and opinion, and I believe the facts support me, this was not the case. The question was whether the Guidelines promulgated by staff as a result of the fire at Brown's Ferry, and later the 1980 rule adopted by the Commission could be clearly interpreted and applied by both licensees and NRC staff. Ample evidence exists that they were not clear and were being interpreted by various parties in various ways. The Court of Appeals in upholding the rule in their 1982 decision understood this point. Commissioner Asselstine stated that the regulatory response should have relied on providing exemptions to the rule where necessary. Unfortunately, while that approach was in use, 234 exemptions were issued as a result of 588 exemption requests. That number of exemptions amply illustrated a continuing lack of clarity in the rule. By early 1984 it was clear that implementation of the rule would require an even larger number of exemptions to be processed. A NRC steering committee was finally appointed to resolve the issue. The entire matter was addressed entirely in the open, including public noticing of workshops held with the industry.

The Subcommittee also questioned the Commission on certain actions by Region IV in regard to the Comanche Peak Nuclear Plant.. This issue has been extensively reviewed by me and by the Commission. As a result of an OIA report which investigated the issue, I established a Review Group to review the entire matter. One inspector and his management handled matters between them in a manner which led to a confrontation. The report of the Review Group resolved any concerns over safety issues at Comanche Peak. The Commission, in a separate but related action, created a study group to reexamine the agency's Regional structure. This study group recommended that Region IV be strengthened and reorganized to be more like Regions I, II and III. This reorganization has been started by assigning four new managers from NRC Headquarters.

During the second portion of the Hearing, the Subcommittee addressed the propriety and effectiveness of the issuance of a policy statement, as opposed to a rule, in addressing the use of drugs and alcohol by nuclear power plant personnel. I and the staff prefer generally to regulate by means of rules rather than policy statements. Rules are more direct and precise, make clear what is required of the licensee, and provide legal authority for the imposition of sanctions, including civil penalties, in the event of violations. However, in the case of fitness for duty, the Commission chose to allow the industry some time - 18 months - to demonstrate the effectiveness of its own program, recognizing that the area is not one in which NRC is fully expert and accepting the idea that self-regulation might lead to a stronger policy being put in place than a Commission rule might accomplish. (Had the Commission passed a rule, I believe it likely that it would have been subject to a court challenge, a circumstance that might well have delayed concerted action). This way of doing business does not in any way limit NRC's ability, to take enforcement action in the event of licensee actions which jeopardize safety at a plant. The failure of a licensee to adequately address any use of drugs and alcohol which could impair the safety of a plant can and will be subject to the enforcement action necessary to correct the problem. It is our belief that the nuclear industry is well ahead of other industrial groups in dealing firmly with drug and alcohol abuse matters.

During the second portion of the hearing, the Subcommittee also heard testimony involving a staff analysis of an OI report on an incident at Fermi Nuclear Power Plant. As a result of this investigation, the licensee was fined $300,000 and the Shift Supervisor was removed from licensed activities. The analysis itself - which the Commission has reviewed, but has not been publicly released - stands by itself as a legitimate analysis of the legal sufficiency of the report as a basis for enforcement action. As a safety matter, our concern was not so much with the premature criticality which the OI report addressed, but with the related matter of the procedures for manipulation of control rods.

The hearing concluded with some statements concerning employment restrictions on individuals removed from licensed activities and interpretation of the NRC's proposed rule on completeness and accuracy of information. This is addressed in enclosure 6 to this letter.

I appreciate the opportunity to comment on these matters. I will be happy to clarify any further matters you may desire me to address.

Sincerely,

Victor Stello, Jr.
Executive Director
for Operations

Enclosures:
1. Fire Protection
2. Fire Protection Chronology
3. Fire Protection Document Summary
4. Fitness for Duty
5. Fermi II
6. Employment Restrictions on Individuals & the Proposed Rule on Completeness and Accuracy of Information

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FIRE PROTECTION

During Oversight Hearings before the House Subcommitte on General Oversight and Investigations of the Committee on Interior and Insular Affairs which were held on June 11, 1987 (Gejdenson hearing), former Commissioner James Asselstine referred to the Commission's fire protection regulations and said:

> "...[A]fter the rule was adopted, again this sort of hard core group of utilities that had been upset about the rule challenged it in court, and after the decision in court, these utilities continued to argue that the rule wasn't clear; that it wasn't clear what was expected of them; that some of the elements of the rule were somewhat gray or ambiguous and that they needed additional guidance.
>
> "So as a result of that, the NRC staff developed additional guidance in a Generic Letter, and it was issued in 1983. ... That Generic Letter was developed by the technical staff, the experts, our fire protection engineers. ...
>
> ***
>
> "It turns out that this small hard core group of utilities that had been recalcitrant throughout this process still wasn't satisfied. At that point, it wasn't that the guidance wasn't clear. It is just that they didn't like the guidance. And they came back to the NRC staff asking for relief from the current requirements.[1]
>
> "They didn't go to the technical reviewers, the experts, the fire protection engineers; the jumped the chain of command and went up to senior staff management with their appeal." [Tr. 118-19]

Although Mr. Asselstine implies that NRC's rule was fully supported by the Court of Appeals, the court was actually critical of the rule and said:

> "Our decision to uphold the NRC's adoption of the fire protection program is reluctant. At almost every step of the way, the NRC's procedures were less than exemplary. The notice of proposed rule-making was cursory and gave the industry the minimum

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[1] The Nuclear Utility Fire Protection Group, the "small hard core group of utilities" to which Mr. Asselstine refers, represents 25 nuclear utilities r nearly half of the nuclear utilities licensed by the NRC including ltimore Gas and Electric Co., a utility Mr. Asselstine cites as an xcellent example of good fire protection implementation.

> acceptable opportunity to respond. The agency's statement of basis for the program in its final form provided limited technical guidance indeed.
>
> ***
>
> "Nonetheless, this is a case in which the rule as tempered by the exemption procedure must be upheld. The fire protection program with the exemption procedure is not a radical departure from the program as it was developed after the Brown's Ferry fire and as it was originally proposed. With the exemption procedure, power plants will be able to show that alternative fire protection systems protect the public safety at the same high level as the system chosen by the Commission. Their failure to make such showings will only be further proof that the Commission was indeed correct that the public safety urgently required a stringent fire protection program for nuclear power plants. [Conn. Light and Power Co. v. NRC, 673 F.2d 525, 536 (D.C. Cir. 1982).]

In reality, as the court's opinion makes clear, the Commission's fire protection rule could not be clearly understood and implemented by many lities because of plant specific design differences. The court upheld the mmission's rule because the Commission firmly committed to allow liberal use of its exemption procedure to account for plant specific difficulties in implementation. As of May 31, 1983 a year after the court's decision the Commission had approved 234 exemptions (out of 588 requests) covering six of the 15 sections of the rule. The staff told the Commission that there was a need for further clarification based on the staff positions which had developed by that time and the identified need to remove requirements which had been demonstrated to be unnecessary. (SECY-83-269, July 5, 1983)

Following Commission consideration of the staff's recommendations, Generic Letter 83-33 was issued on October 19, 1983 setting forth interpretations of the fire protection rules. A series of regional workshops were scheduled to ovide further clarification and to answer questions utility representatives

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ight have regarding the interpretations. In several areas, e.g. suppression and detection and definition of fire area boundaries, G.L. 83-33 required utilities to seek an exemption if their implementation approach was different than the staff review criteria. This process was not established because the utilities' implementation could be determined a "noncompliance" with the rule but rather to insure that the staff could review and concur that the alternative implementation approach in fact met the intent of the rule. There are, of course, other procedural mechanisms which can be used to reach the same result without the necessity of processing exemptions. In some instances there were more utilities seeking exemptions to particular provisions than there were utilities who thought the staffs' approach was the best for their facility.

As a result of a seminar sponsored by utilities to discuss fire protection interpretation difficulties held in mid-February, the Nuclear Utility Fire Protection Group submitted to NRC staff on March 6, 1984 a list of issues which it believed were not clearly addressed in the Commission's rule. This group met with NRC program staff (NRR) on the morning of March 8, 1984 and met with Vic Stello, Deputy Executive Director for Regional Operations and Generic Requirements that afternoon. This sequence of events led to yet another attempt to provide comprehensive guidance and clarification of the fire protection rules. The guidance was distributed to operating reactor licensees at regional workshops held in the spring of 1984. Following the workshops, the receipt of comments of many utilities, and the filing of a Differing Professional Opinion co-signed by five NRC staff personnel involved with fire protection reviews (later supported by a sixth), it was parent that further clarification was necessary. The principal concern of the staff personnel was that timely and/or consistent resolution of fire protection issues was not possible.

At a May 30, 1984 Commission meeting, it was apparent that significant questions concerning fire protection interpretations were being raised by the industry, staff inspectors, staff reviewers, and by legal interpretations within the agency. On August 27, 1984 the Executive Director for Operations, William J. Dircks, directed the formation of a Steering Committee consisting of membership from the agency's regional and legal staff as well as its Office of Nuclear Reactor Regulation. The Committee was directed to conduct a comprehensive review of current fire protection issues.

ollowing meetings with fire protection engineers from headquarters and the regional offices, five specific concerns surfaced: 1) the responsibility for fire protection was fragmented since four headquarters organizations and five regions were attempting to provide interpretative guidance; 2) fire protection guidance and technical specifications were inconsistant and inadequate and no list of "minimum requirements" existed; 3) regional inspectors needed an enforcement policy and a policy for fire protection quality assurance; 4) a need for control room electrical review was identified; and 5) no agreement on the interpretations in G.L. 83-33 was readily apparent.

What clearly emerges from this history is the accuracy of the Court of Appeals' assessment of the rule, i.e., in its final form it provided limited echnical guidance. As a result, the Steering Committee developed specific, consistent, concrete recommendations which were then circulated within the agency for staff comment and were then published in the federal register for public comment in January 1985. Following revisions in light of comments, the comprehensive fire protection interpretations were presented to the Commission for review and approval in September 1985. The Commission approved the issuance of these interpretations and on April 24, 1986 Generic Letter 86-10 was issued. By March of this year the staff was able to recommend final disposition of several long pending fire protection enforcement actions to the Commission.

Enclosure 1

FIRE PROTECTION ISSUE CHRONOLOGY

3/22/75	Major fire occurs at Browns Ferry Nuclear Plant affecting a number of normal operating and safety systems.
2/21/76	NRC Special Review Group on Browns Ferry Fire issues report on incident (NUREG-0050). More than 50 recommendations for improvement of fire protection at nuclear power plants are made by the Review Group.
5/1/76	NRC staff issues new fire protection guidelines for nuclear power plants based on NUREG-0050 recommendations. Licensees are requested to compare fire protection features of their facilities to these guidelines. [A complete listing of post-Browns Ferry fire protection guidance developed/issued by the NRC staff is provided in an attachment to this chronology.]
Early-1977	All licensees provide a Fire Protection Program Evaluation for their facilities identifying areas that do not conform to new NRC guidelines. NRC staff initiates effort to achieve full implementation of new guidelines by October 1980.
Early-1980	Most new fire protection guidelines have been implemented by most licensees; but several items remain outstanding and some licensees will not implement these remaining items voluntarily.
5/29/80	Commission issues proposed rule (IOCFR50.48 and Appendix R) to resolve remaining fire protection issues in operating reactors.
11/19/80	Commission issues final fire protection rule for operating reactors. This new rule backfits new requirements for protection of safe shutdown capability to all operating reactors, even those for which the NRC staff has already accepted alternative fire protection features in the fire protection reviews under the new post-Browns Ferry guidelines.

1/29/82	New fire protection rule is challenged in U.S. Court of Appeals by licensees belonging to Nuclear Utilities Fire Protection Group (NUFPG). Licensees contend that NRC did not indicate or explain the technical bases for new rule in noticing proposed fire protection rule revisions.
3/16/82	Court of Appeals upholds NRC on new fire protection rule, because rule includes explicitly a provision for licensees to request exemption from any aspect of the new rule upon showing that modifications required under the new rule would not enhance fire protection safety or that such modifications may be detrimental to overall facility safety.
7/5/83	NRC staff reports to Commission (in SECY-83-269) that, as of the end of May 1983, licensees have requested 588 exemptions from Appendix P requirements.
10/19/83	NRC staff issues Generic Letter 83-33 informing licensees that staff evaluations of exemption requests, and initial inspections at several facilities for compliance with Appendix R requirements, indicate serious problems with licensees' interpretation and implementation of Appendix R requirements.
11/15/83	General meeting in Bethesda, Md. of cognizant NRC program and regional office personnel responsible for fire protection implementation to discuss serious, widespread confusion among licensees regarding Appendix R interpretation. Decision is made to issue Information Notice and hold workshops in each region to address these problems.
12/19/83	Order imposing $50,000 fine for violations of Appendix R requirements at Trojan Plant is signed by Director of Inspection and Enforcement, NRC. Licensee's response to citations indicates that confusion regarding interpretation of Appendix R requirements is a major factor in the development of this situation. This action by NRC focuses strongly the utilities' concerns regarding the need for clarifications by NRC regarding Appendix R interpretations.
2/13/84	Information Notice 84-09 is issued by NRC staff informing licensees of non-compliance problems noted in initial Appendix R inspections, providing supplemental guidance regarding acceptable interpretations of Appendix R requirements,and advising of upcoming regional Appendix R workshops.

2/14-15/84 General meeting sponsored by NUFPG for all operating reactor utilities to discuss Appendix R interpretation difficulties, and to identify specific Appendix R issues and common areas of confusion among licensees that require clarification by NRC.

3/2/84 NUFPG submits formally to NRC staff "Questions Raised During The Nuclear Utility Fire Protection Seminar", for discussion with NRC staff at a meeting on 3/8/84.

3/6/84 NUFPG submits formally to NRC staff "Issues Which Are Not Clearly Addressed In The Fire Protection Rule", for discussion with the NRC staff at a meeting on 3/8/84.

3/8/84 NUFPG meets during the morning with cognizant NRC program office management, and during the afternoon with the Deputy Executive Director for Operations and members of his staff, to discuss Appendix R questions and interpretation issues raised in the 3/2/84 and 3/6/84 NUFPG submittals.

3/22/84 NRC staff provides to Commission for information a comprehensive new package of proposed guidance to assist operating reactor licensees in interpreting and implementing the requirements of Appendix R. The new guidance package addresses directly the questions and problems that have arisen in connection with Appendix R fire protection reviews and inspections to date (in particular, the extensive set of questions and issues identified and submitted by operating reactor utilities through NUFPG). The new guidance package is also distributed to all affected operating reactor licensees.

3/23/84 First of five NRC regional Appendix R workshops is held in Region III (Chicago, Ill. area) to discuss new Appendix R guidance package. Similar workshops were held subsequently in each NRC region as follows:

Region V	(San Fransisco area)	4/5/84
Region I	(Philadelphia area)	4/18/84
Region IV	(Dallas area)	4/26/84
Region II	(Atlanta area)	5/4/84

(Notice of these meetings was sent by the NRC Regional Offices to all affected licensees/applicants, to cognizant state government officials and Local Public Document Rooms, and to a number of public interest groups, intervenors, and other interested members of the public, well in advance of the workshops, in accordance with standard NRC document distribution service lists.)

5/2/84	Differing Professional Opinion submitted (co-signed) by five NRC program office and regional inspection staff, objecting to use of new Appendix R interpretations included in the new guidance package. The concern is expressed that the new interpretations will not permit timely or consistent resolutions of Appendix R deviations.
5/29/84	A member of the Office of General Counsel (OGC) staff expresses legal concerns regarding the new Appendix R interpretations in a memo to the Commissioners' Techhical Assistants.
5/30/84	Commission meeting to discuss technical concerns expressed in Differing Professional Opinion by staff engineers and regional inspectors, as well as legal concerns expressed by OGC staff member.
8/27/84	NRC Executive Director for Operations (EDO) initiates a comprehensive review of current fire protection issues by the Fire Protection Policy Steering Committee (FPPSC). The FPPSC was tasked to examine all current licensing, inspection, and technical fire protection issues, and to develop policy recommendations aimed at expediting Appendix R compliance for older plants and assuring consistent levels of fire protection safety at all plants.
10/2/84	FPPSC meets with headquarters and regional fire protection engineers to obtain their candid views on all current fire protection issues.
10/26/84	The FPPSC complete their review of current fire protection issues and report their findings to the EDO. The FPPSC support the proposed new Appendix R guidance package (with only minor changes) as the official agency position on all Appendix R interpretation issues covered therein. The FPPSC report is distributed to all cognizant program and regional office organizations for comment.
12/10/84	The NRC EDO identifies questions raised by internal comments on the FPPSC that need to be answered before proceeding to the Commission for decision on Appendix R issues. NRC staff is directed to release FPPSC report to PDR for comment by interested parties, and to prepare a Commission Paper on this matter taking into account comments received.
1/15/85	NRC staff issues Generic Letter 85-01, transmitting FPPSC report to operating reactor licensees and requesting comment.

6/24/85	NRC staff completes fire protection Commission Paper, taking into account comments received on FPPSC report, and transmits to the EDO a comprehensive fire protection package for final consideration by the Commission.
7/24/85	The Committee for Review of Generic Requirements (CRGR) reviews the final fire protection package as requested by the EDO. The Committee concludes that the detailed guidance proposed by the NRC staff in the fire protection package can be usefully applied in facilitating the implementation of Appendix R, and recommends that it be sent forward for Commission consideration subject to several minor changes.
9/17/85	Commission Paper (SECY-85-306) containing final NRC staff recommendations on implementation of Appendix R is sent to the Commission.
10/3/85	Commission meeting to discuss SECY-85-306. Current views of fire protection technical staff who submitted DPO are requested. (Current views were provided in memos dated 9/20/85, 10/25/85 and 11/14/85.) Several additional items requiring further attention or modification by NRC staff were also identified by the Commission. (These items were addressed subsequently by the staff in SECY-85-306A on 12/3/85, and in SECY-306B on 12/19/85.)
10/24/85	OGC provides to Commission a legal analysis of new Appendix R interpretations proposed by NRC staff in SECY-85-306. OGC concludes that all but one of the interpretations are legally correct and that legal concerns about another could be overcome by a strong technical safety argument supporting the new interruption. This resolves concerns expressed by OGC staff member in 5/29/84 memo to Commission.
11/27/85	Recommended resolution of technical staff DPO opposing new Appendix R interpretations is submitted to Director, NRR, in accordance with applicable NRC procedure (NRC Manual Chapter 4125). Finding of designated official is that the DPO fails to justify modification of the NRC management decision to develop new Appendix R interpretations and guidance to facilitate implementation of Appendix R.
3/7/86	Commission approves issuance of Generic Letter (GL-86-10) to licensees promulgating new Appendix R interpretations and guidance.

4/24/86	NRC staff issues Generic Letter 86-10, "Implementation of Fire Protection Requirements".
3/27/87	SECY-87-84 sent to Commission by NRC staff summarizing Appendix R inspection activities and escalated enforcement actions, and recommending final disposition of several long pending enforcement actions.

Fire Protection Guidance Issued Since January 1, 1975:

IE Information Notices

No. 83-41: Actuation of fire suppression systems causing inoperability of safety related equipment.

No. 83-69: Improperly installed fire dampers at nuclear power plants.

No. 83-83: Use of portable radio transmitters inside nuclear power plants.

*No. 84-09: Lessons Learned From NRC Inspections of Fire Protection Safe Shutdown Systems (10 CFR 50, Appendix R)

Standard Review Plan

9.5.1, Rev. 1 Fire Protection System, dated 5/1/76

9.5.1, Rev. 2 Fire Protection Program, dated 03/78

9.5.1, Rev. 3 Fire Protection Program, July 1981.

lations

CFR Part 50: Proposed fire protection program for nuclear power plants operating prior to January 1, 1979, dated May 29, 1980. Federal Register Vol. 45, No. 105, 36082.

10 CFR Part 50: Fire protection program for operating nuclear power plants, dated November 19, 1980. Federal Register Vol. 45, No. 225, 76602.

10 CFR Part 50: Fire protection rule corrections, dated September 8, 1981. Federal Register Vol. 46, No. 173, 44734.

Generic Letters

NOTE: The following documents were obtained from the Palisades file Docket No. 50-255. Similar documents should be in the file for other operating facilities. The dates may vary slightly.

1. Letter dated 9/28/76 - Enclosing App. A to BTP APCSB 9.5-1 and supplementary guidance on information needed for fire protection program evaluation.

2. Letter dated 12/1/76 - Enclosing sample Technical Specifications and an errata sheet.

Letter dated 8/19/77 - Enclosing "Nuclear Plant Fire Protection Functional Responsibilities, Administrative Controls and Quality Assurance."

4. Letter dated 6/8/78 - Re: Manpower requirements for operating reactors.

5. Letter dated 9/7/79 - Re: Minimum fire brigade shift size.

6. Letter dated 9/14/79 - Enclosing staff positions - safe shutdown capability.

7. Letter dated 10/31/80 - Enclosing new 10 CFR 50.48 regarding fire protection schedules for operating nuclear power plants.

8. Letter dated 11/24/80 - Enclosing a copy of revised 10 CFR 50.48 and new App. R to 10 CFR 50, and a summary of open items from the SER for the BTP APCSB 9.5-1 review.

9. Letter dated 2/20/81 - Generic Letter 81-12 identifying information needed for NRC review of modifications for alternative shutdown capability.

10. Letter dated 4/7/82 - Provided clarification to Generic Letter 81-12 and guidance on information needed for NRC review of exemption requests.

11. Letter dated 10/6/82 - Generic Letter 82-21; provided criteria for annual, biennial, and triennial audits required by Technical Specifications.

*12. Letter dated 10/19/83 - Generic Letter 83-33; NRC Positions on Certain Requirements of Appendix R to 10 CFR 50.

Staff Generic Positions

1. Letter, Denton to Bernsen, dated 4/20/82 - Control room fires.

*2. SECY 83-269, dated July 8, 1983 - Attachments B and C.

3. Memo, Eisenhut to Olshinski, dated 12/30/83 - Physical independence of electrical systems.

4. Memo, Eisenhut to Jordan, dated 10/24/83 - Bullet resistant fire doors.

*Staff positions regarding the need for certain exemptions delineated in this guidance document have been revised per the "Interpretations of Appendix R".

FIRE PROTECTION GENERIC DOCUMENTS LISTING

(1975 - 1987)

The focus of the attached listing of fire protection related documents is generic. Many hundreds of additional documents would be listed if fire protection related documents in each individual plant docket were tallied. This listing is extensive (approx. 236 items) but not exhaustive, even with respect to the generic category of fire protection documents.

The listing is intended to portray, in a more balanced manner than was presented in the June 11, 1987 oversight hearing, (a) the background for the development of the new Appendix R interpretations and implementation guidance approved by the Commission in early 1986, and (b) the full range and extent of the meetings, discussions, reviews, expressions of views and differing opinions, etc., both within NRC and from outside the agency, that contributed over the course of several years to the final form of the new interpretations and guidance.

Generic Fire Protection Documents Listing

3/24/75	IE Bulletin 75-04, "Cable Fire at Browns Ferry"
3/26/75	NRC Announcement No. 45 by NRC Executive Director for Operations (EDO), "Appointment of Special Review Group" ...to review the Browns Ferry fire incident of 3/22/75.
4/3/75	IE Bulletin 75-04A, "Cable Fire at Browns Ferry"
2/21/76	Memorandum from Browns Ferry Special Review Group to L.V. Gossick transmitting report of Special Review Group, NUREG-0050, "Recommendations Related to Browns Ferry Fire."
3/2/76	Testimony of S.H. Hanauer regarding Special Review Group established to investigate fire at plant.
3/76	Initial issuance of Branch Technical Position (BTP) APCSB 9.5-1, "Guidelines for Fire Protection for Nuclear Power Plants." (Applicable to plants docketed after July 1, 1976.)
5/1/76	Standard Review Plan (SRP) Section 9.5.1, "Fire Protection System." (Incorporated BTP APCSB 9.5-1.)
8/23/76	Appendix A to Branch Technical Position APCSB 9.5-1; issued to provide necessary flexibility for fire protection programs at plants already under construction or operating. (Incorporated into SRP Section 9.5.1.)
10/31/76	"Supplementary Guidance on Information Needed for Fire Protection Evaluation." (Supplements Appendix A to BTP APCSB 9.5-1.)
5/12/77	"Sample Technical Specifications" ...(for plant Fire Protection features). (Supplements Appendix A to BTP APCSB 9.5-1.)
6/14/77	"Nuclear Plant ~~Fire~~ Protection Functional Responsibilities, Administrative Controls, and Quality Assurance" (Supplements Appendix A to BTP 9.5-1.)
3/78	Branch Technical Position ASB 9.5-1; a reissue, with minor changes, of BTP APCSB 9.5-1.
5/11/78	"Manpower Requirements for Operating Reactors" (Supplements Appendix A to BTP APCSB 9.5-1.)
3/31/78	Revision 2 to SRP Section 9.5.1, "Fire Protection Program." (Incorporated BTP ASB 9.5-1)
2/13/80	Memorandum from R.B. Minogue to The Commissioners (SECY-80-88) recommending that Commission approve publication of proposed fire protection rule.

5/29/80	Proposed Fire Protection Rule for Operating Nuclear Power Plants; published for comment this date in the Federal Register (45 FR 3602).
6/3/80	Memorandum (By: D.P. Notley - To: Distribution) notifying that Commission affirmed at 4/23/80 meeting proposed fire protection rule delineating certain minimum FP requirements at operating facilities.
8/15/80	Memorandum from H.R. Denton to The Commissioners (SECY-80-381) advising of NRC staff determination regarding fire protection evaluation for SEP plants. Dedicated system will be required for Ginna and Yankee Rowe; alternate system will be required for remaining facilities.
11/13/80	Memorandum (By: D.P. Notley - To: Distribution) regarding justification analysis for Appendix R fire protection programs for reactors operating prior to 1/1/79.
11/19/80	Fire Protection Rule for Operating Nuclear Power Plants. Published in Federal Register this date (45 FR 76602); new rule became effective on February 17, 1981.
11/24/80	Letter To All Power Reactor Licensees With Plants Licensed Prior To January 1,1979; notified affected licensees of new fire protection rule.
11/25/80	Memorandum from D.P. Notley to J.E. Sullivan confirming 11/19/80 telcon regarding (proposed) Reg. Guide 1.120 on fire protection.
2/20/81	Generic Letter 81-12; issued to all licensees to identify information needed for NRC review of plant modifications for alternate shutdown capability.
7/27/81	Memorandum from W.J. Dircks to Commissioner Bradford responding to 7/1/81 request for information concerning the method to be used to ensure compliance with Appendix R.
7/31/81	Revision 2 to BTP ASB 9.5-1, "Guidelines for Fire Protection for Nuclear Power Plants." (Issued as Rev. 2 to BTP CMEB 9.5-1.)
7/31/81	Revision 3 to SRP Section 9.5.1, "Fire Protection Program" issued. (Incorporated Rev. 2 to BTP CMEB 9.5-1)
9/8/81	Corrections to Fire Protection Rule for Operating Nuclear Power Plants; published this date in Federal Register (46 FR 44734).
10/14/81	Memorandum from R.H. Vollmer to W.J. Johnston requesting meeting to discuss agenda for 10/19/81 meeting with Commissioners' assistants regarding current status on fire protection rule implementation schedules and exemptions.
10/15/81	Memorandum from R.H. Vollmer to V. Benaroya requesting information regarding mode of implementation of fire protection requirements in operating reactors and new plants.

12/9/81	Letter from Nuclear Utilities Fire Protection Group (W. Counsil et al) to R.H. Vollmer forwarding fire protection positions document to be discussed at meeting with NRC staff proposed for mid-December.
12/11/81	Memorandum from R.H. Vollmer to W.V. Johnston notifying of 12/17/81 meeting with Nuclear Utilities Fire Protection Group to discuss positions regarding fire protection safety.
1/11/82	Memorandum from W.J. Dircks to The Commissioners (SECY-82-13) providing information regarding status of fire protection rule implementation, and requesting approval to grant schedular exemptions.
2/1/82	Memorandum from D.P. Notley to R.L. Ferguson discussing objection to NRC criteria for granting exemptions to Appendix R, Section III.G requirements.
2/9/82	Letter from Nuclear Utilities Fire Protection Group (W. Counsil et al) to R.H. Vollmer forwarding summary of 1/21/82 meeting with NRC staff on fire protection requirements.
2/19/82	Meeting Summary (By: D.P. Notley - To: Distribution) regarding meetings with Sandia Labs and UL on 8/9-11/82 on requirements for 20-ft separation fire test and final test plan.
2/25/82	Memorandum from D.P. Notley to R.L. Ferguson supplementing 2/1/82 memo regarding objection to criteria for granting exemptions to Appendix R, Section III.G requirements.
3/5/82	Letter from Nuclear Utilities Fire Protection Group (W. Counsil et al) to R.H. Vollmer forwarding summary of 2/17/82 meeting with NRC staff on fire protection requirements.
3/16/82	Letter from Nuclear Utilities Fire Protection Group (W. Counsil et al) to R.H. Vollmer forwarding draft letter proposed for issuance within NRC to obtain guidance regarding compliance with Appendix R.
3/16/82	Decision of the U.S. Court of Appeals for the District of Columbia regarding the Fire Protection Rule challenge brought by several utility members of the Nuclear Utilities Fire Protection Group. The Court decided the matter narrowly in favor of NRC, with explicit provision that the agency must process in good faith requests by utilities for exemption from any aspect of the rule.
3/17/82	Memorandum from W.J. Dircks to The Commissioners (SECY-82-13A) providing sample letter for licensees requesting schedular exemption or proposing alternate shutdown capability.
4/21/84	Memorandum from W.J. Dircks to The Commissioners (SECY-82-138) informing Commission of status of implementation of fire protection rule for quarter ending 3/31/82.

3/16/82	Charter for the Committee for Review of Generic Requirements (CRGR). Approved initially by Commission this date; subsequently revised on 6/6/84 (Rev.1), 6/20/86 (Rev.2), 8/13/86 (Rev.3) and 4/6/87 (Rev.4).
6/23/82	Memorandum from W.J. Dircks to The Commissioners (SECY-82-267) regarding a fire protection rule for future nuclear plants. SRP 9.5.1 now includes all of the fire protection criteria being used by the staff in its licensing reviews. Other acceptable alternatives to the provisions of SRP 9.5.1 are being identified as the staff processes the numerous requests for exemptions from Appendix R requirements.
7/26/82	Memorandum from W.J. Dircks to The Commissioners (SECY-82-13C) informing Commission of status of fire protection rule implementation for quarter ending 6/30/82.
8/10/82	Memorandum from T.E. Murley to D.G. Eisenhut suggesting that fire protection audit composition and audit qualification guidance be sent to licensees by formal correspondence.
8/25/82	Letter from W. Counsil to W. J. Dircks expressing concerns regarding 1/1/83 target completion date for fire protection exemption request reviews in view of overwhelming volume of requests to be considered.
9/7/82	Memorandum from R.H. Vollmer to W.V. Johnston regarding 9/1-2/82 meetings on fire protection risk assessment analyses. Efforts should be focused on performing Appendix R review to identify necessary plant modifications.
9/17/82	Letter from W.J. Dircks to W.G. Council addressing concerns expressed in 8/25/82 letter regarding fire protection exemption review process and schedule. 1/1/83 target completion date will not be met at the expense of in-depth review of each request.
9/17/82	Memorandum from R.H. Vollmer to S.H. Hanauer commenting on Standard Tech Specs for fire protection.
9/27/82	Memorandum from R.H. Vollmer to S.H. Hanauer forwarding proposed changes to fire protection audits section of Standard Tech Specs.
10/5/82	Memorandum from D.G. Eisenhut to T.E. Murley forwarding draft Generic Letter regarding Tech Specs for fire protection audits.
12/10/82	Memorandum from W.J. Dircks to The Commissioners (SECY-83-13D) informing the Commission of status of fire protection rule implementation for quarter ending 9/30/82.
2/22/83	Memorandum from T.V. Wambach to D. Crutchfield notifying of 3/1/83 meeting with Nuclear Utility Fire Protection Group to discuss differences between NRC and licensees' Appendix R interpretations.
3/24/83	Memorandum from T.V. Wambach to R.H. Vollmer submitting status report of incomplete Appendix R reviews.

4/11/83	Meeting Summary (By: T.V. Wambach - To: Distribution) regarding 3/1/83 meeting with Nuclear Utility Fire Protection Group regarding clarification of Appendix R fire protection rule.
7/5/83	Memorandum from W.J. Dircks to The Commissioners (SECY-83-269) summarizing licensee fire protection exemption requests, disposition of requests, and issues raised by requests.
9/22/83	Summary (By: T.V. Wambach - To: Distribution) of fire protection rule exemption requests, and approvals of alternate safe shutdown modifications.
9/23/83	Transcript of ACRS Fire Protection Subcommittee Meeting this date; discussed Appendix R inspection methods and findings, and systems interactions aspects of fire protection.
10/13/83	Memorandum from L.E. Whitney to C. Anderson et al forwarding summary of safe shutdown inspection program planning meeting on 9/13/83.
10/19/83	Generic Letter 83-33; issued to all nuclear power plant licensees and applicants regarding NRC staff Appendix R interpretations.
12/6/83	Letter from R.H. Vollmer to G.J. Ogeka forwarding Standard Order for DOE work, "Reliability and Probabilistic Assessments for Fire Events." Issued to Brookhaven National Labs.
12/13/83	Memorandum from J.G. Keppler to R.C. DeYoung regarding enforcement guidelines for fire prevention/protection violations.
12/15/83	Memorandum from P.F. McKee to W.J. Dircks et al transmitting summary of 11/15/83 meeting of NRC program office and regional office staff on fire protection safe shutdown capability.
12/19/83	Order signed by Director of Inspection and Enforcement, R.C DeYoung, imposing civil penalty of $50,000 for failure to provide certain fire protection features required by Appendix R at Trojan plant.
1/23/84	Memorandum from W. J. Dircks to The Commissioners (SECY-84-24) recommending that Commission continue to use existing SRP for review of fire protection programs at future plants.
2/13/84	IE Information Notice 84-09, "Lessons Learned from NRC Inspections of Fire Protection Safe Shutdown Systems"
2/14/84	Memorandum from W.J. Dircks to The Commissioners (SECY-84-77) providing the Commission with information concerning results and staff actions arising from initial Appendix R inspections.
2/22/84	Memorandum from V. Stello to R.C. DeYoung et al requesting information for implementing Sections II and III of Appendix R, and a listing (to be provided in advance of first NRC Regional Appendix R Workshop) of all fire protection quidance issued by NRC.

3/1/84	Letter from R.H. Vollmer to G.J. Ogeka forwarding revised proposal for DOE effort on "Reliability and Probabilistic Assessments for Fire Events."
3/2/84	Memorandum from P.F. McKee to J.N. Grace submitting currently expected NRC attendees for upcoming regional Appendix R workshops.
3/2/84	Letter from Nuclear Utilities Fire Protection Group (J.M. McGarry) to R.H. Vollmer/J.M. Taylor forwarding a list of questions regarding fire protection regulations generated during a recent NUFPG seminar on Appendix R implementation. Questions could be discussed in meeting with staff on 3/8/84.
3/6/84	Letter from R.C. Lewis to All Operating Utilities/Dockets in NRC Region III transmitting meeting notice and agenda for Appendix R Fire Protection Workshop in Chicago area on 3/23/84. Notice was also sent to cognizant state government officials, public interest groups, intervenors, and Local Public Document Rooms in accordance with applicable Region III document distribution service lists. [Similar notices regarding Appendix R workshops in other NRC Regions were sent to utilities and other interested parties in those Regions by similar letters dated 3/9/84 (Region I), 3/2/84 and 4/9/84 (Region II), 3/26/84 (Region IV), and 3/15/84 (Region V).]
3/6/84	Letter from J.M. McGarry to R.H. Vollmer forwarding a set of issues not clearly addressed in fire protection rule. Issues could be discussed in meetings with Vollmer/Taylor/Stello on 3/8/84.
3/6/84	Memorandum from R.H. Vollmer to J.M. Taylor forwarding agenda for forthcoming NRC regional Appendix R Workshops.
3/7/84	Revision 1 to IE Information Notice 84-09, "Lessons Learned from NRC Inspections of Fire Protection Safe Shutdown Systems"
3/13/84	Memorandum from R.C. DeYoung to W.J. Dircks forwarding draft fire protection enforcement guidance, to be sent to Regional Administrators for discussion during 3/29/84 meeting.
3/19/84	Memorandum from H.R. Denton to V. Stello providing listing of fire protection guidance requested in 2/22/84 memo.
3/20/84	Memorandum from Chairman Palladino to W.J. Dircks forwarding questions on SECY-84-24 regarding whether plants licensed prior to 1/1/79 must meet more stringent requirements on fire protection than future plants.
3/22/84	Memorandum from W.J. Dircks to the Commissioners forwarding for information a package of proposed guidance on Appendix R interpretations and implementation. The new guidance is intended to facilitate Appendix R implementation by addressing directly questions and problems that have arisen in connection with NRC reviews and inspections of operating reactors. The package was distributed also

	to all affected licensees, and its contents discussed at NRC Regional Appendix R workshops over the next month.
3/23/84	Transcript of Region III Appendix R Workshop held in Chicago area on this date.
3/24/84	Memorandum from R.L. Ferguson to V. Benaroya submitting Differing Professional Opinion regarding exemption from requirements of Section III.G.2 of Appendix R. Those requirements should not be considered applicable for control rooms where reasonable separation does not exist.
3/26/84	Memorandum from S.J. Chilk to W.J. Dircks advising that the Commission has approved staff recommendation to continue to use existing SRP for review of fire protection programs of future plants (SECY-84-24).
3/28/84	Memorandum from H.R. Denton to F. Rosa designating him as the Responsible NRC Manager for conducting an independent assessment of the issues raised in the 3/24/84 DPO.
4/5/84	Transcript of Region V Appendix R Workshop held in San Francisco area on this date.
4/12/84	Memorandum from W.J. Dircks to Chairman Palladino responding to 3/20/84 memo regarding SECY-84-24.
4/16/84	Memorandum from R.H. Vollmer to H.L. Thompson et al forwarding Revision 3 to SRP Section 9.5.1, "Fire Protection Program," to be used in fire protection reviews of NTOL aplications.
4/17/84	Memorandum from W.V. Johnston to R.L. Ferguson expressing appreciation for his participation in the Region V Appendix R Workshop.
4/18/84	Transcript of Region I Appendix R Workshop held in Philadelphia area on this date.
4/26/84	Transcript of Region IV Appendix R Workshop held in Dallas area on this date.
4/26/84	Memorandum from R.C. DeYoung to Regional Administrators requesting comment on fire protection enforcement guidance that has been revised based upon information distributed to licensees during Appendix R workshops.
5/2/84	Memorandum from W.J. Dircks to R.C. DeYoung regarding draft enforcement guidance distributed for comment 4/26/84. Staff should not take action on specific cases until we have evaluated findings from recent Appendix R workshops.
5/2/84	Memorandum from R. Eberly, D. Kubicki, C. Ramsey, J Stang, and J.Ulie to R.L. Ferguson setting forth a Differing Professional Opinion (DPO) of five cognizant staff members of NRC's program and

	regional offices, disagreeing with certain proposed Appendix R interpretations.
5/3/84	Memorandum from R.H. Vollmer to D. Eisenhut et al notifying of 5/8/84 meeting with Denton and fire protection engineers to discuss DPO submitted on 5/2/84.
5/4/84	Transcript of Region II Appendix R Workshop held in Atlanta area on this date.
5/4/84	Memorandum from J.P. O'Reilly to R.C. DeYoung forwarding comments on draft fire protection enforcement guidance distributed on 4/26/84.
5/7/84	Memorandum from R.L. Ferguson to R. Eberly at al acknowledging receipt of 5/2/84 DPO. DPO being forwarded to the Office Director.
5/11/84	Memorandum from V. Benaroya to R.H. Vollmer commenting on 5/2/84 DPO and proposing a course of action for resolution.
5/14/84	Memorandum from R.C. DeYoung to H.R. Denton et al discussing NRC Regional Appendix R Workshop in Atlanta on 5/4/84, and advising of workshop scheduled for June 1984 to discuss NRC Appendix R inspection team reviews.
5/29/84	Memorandum from S. Trubatch to D. Garner raising legal questions concerning proposed new Appendix R interpretations.
5/29/84	Memorandum from L.E. Whitney to J.H. Grace notifying of Appendix R inspection team workshop on 6/6/84 and 6/7/84.
5/30/84	Memorandum from R.L. Ferguson to H.R. Denton notifying of 5/2/84 DPO, in accordance with NRC Manual Chapter 4125 procedure, and providing comments on DPO.
5/30/84	Memorandum from R.H. Vollmer to H.R. Denton forwarding 5/2/84 DPO for resolution. On the basis of recent discussions it appears unlikely that DPO will be resolved at this level.
5/30/84	Transcript of Commission Meeting on this date to discuss contended Appendix R fire protection issues.
5/31/84	Memorandum from G. Harrison to V. Gilinsky discussing and supporting DPO submitted 5/2/84.
6/8/84	Memorandum from S.J. Chilk to W.J. Dircks identifying staff requirements resulting from Commission briefing on fire protection on 5/30/84. Staff's comments on 5/2/84 DPO and 5/29/84 Trubatch memo are requested, additional information should be provided regarding Appendix R inspection findings, and a Commission Paper on fire protection should be prepared.
6/11/84	Memorandum from T.E. Murley to R.H. Vollmer providing feedback from Region I Appendix R workshop as requested. Workshop was beneficial; but some additional clarification is needed and potential inspection problem is identified.

6/13/84	Memorandum from W.V. Johnston to R.H. Vollmer forwarding lists of questions from 5/31/84 Commission meeting to be addressed by NRR and IE.
6/15/84	Memorandum from H.R. Denton to F. Rosa designating him as Responsible NRC Manager for independent assessment of 5/2/84 DPO.
6/21/84	Memorandum from J,K. Asselstine to W.J. Dircks regarding implementation of Appendix R at Calvert Cliffs plant.
6/21/84	Draft memorandum from W.J. Dircks to The Commissioners regarding implementation of Appendix R fire protection requirements.
6/27/84	Memorandum from W.J. Olmstead to R.H. Vollmer providing ELD response to legal points made in 5/29/84 Trubatch memo regarding Appendix R interpretations.
7/2/84	Memorandum from J.G. Keppler to V. Stello forwarding suggested response to Commissioner Asselstine's 6/21/84 memoto EDO.
7/6/84	Memorandum from F. Rosa to H.R. Denton requesting extension of time to complete independent assessment of issues raised by DPO submitted 5/2/84.
/10/84	Memorandum from W.J. Dircks to J.K. Asselstine responding to comments on implementation of Appendix R requirements. Industry confusion mitigated by clarifying guidance and conducting regional workshops. Appendix R implementation review plan under consideration.
7/10/84	Memorandum from W.J. Dircks to R.C. DeYoung requesting information regarding staff actions to assure exemption requests will be considered in timely manner.
7/17/84	Memorandum from J.G. Keppler to R.C. DeYoung providing Region III comments on 5/2/84 DPO and relevant inspection experience.
7/19/84	Memorandum (By: T.V. Wambach - To: Distribution) discussing fire protection rule schedular exemptions.
7/27/84	Memorandum from R.L. Spessard to J.N. Grace providing additional information on Appendix R inspection findings in response to a request from the Commissioners.
7/31/84	Memorandum from W.V. Johnston to F. Rowsome forwarding review of probabilistic safety study methodology for determining fire risk through use of PRAs.
7/31/84	Memorandum from J.K. Asselstine to W.J. Dircks requesting information about meeting between NRC staff and representatives of the Nuclear Utilities Fire Protection Group on 7/24/84.

8/6/84	Memorandum from R.C. DeYoung to H.R. Denton forwarding regional input regarding fire protection inspection experience requested in 6/8/84 memo.
8/13/84	Memorandum from W.J. Dircks to J.K. Asselstine regarding NRC staff meeting with Nuclear Utilities Fire Protection Group representatives on 7/24/84.
9/6/84	Letter from the Nuclear Utilities Fire Protection Group (W. Counsil et al) to Chairman Palladino commenting on the fire protection briefing by the NRC staff at the 5/30/84 Commission meeting, and providing views of the Group concerning Appendix R requirements and issues.
9/13/84	Memorandum from W.J. Dircks to H.R. Denton et al concurring in assignments and general charter of steering committee and working group set up to resolve current fire protection issues.
9/21/84	Memorandum from R.H. Vollmer to H.R. Denton et al forwarding summary of first meeting of the Fire Protection Policy Steering Committee on 9/13-14/84.
9/24/84	Memorandum from R.H. Vollmer to D.G. Eisenhut regarding justification for modification of fire protection license conditions.
9/26/84	Memorandum from R.H. Vollmer Denton et al forwarding agenda for second meeting of the Fire Protection Policy Steering Committee on 9/27/84.
9/27/84	Memorandum from R.H. Vollmer to H.R. Denton et al requesting fire protection engineers attend 10/2/84 meeting of the Fire Protection Policy Steering Committee to provide views on fire protection issues.
10/2/84	Memorandum from D.G. Eisenhut to R.H. Vollmer discussing 9/6/84 letter from Nuclear Utilities Fire Protection Group regarding discrepancies between guidance given in Generic Letter 83-33 and NRC Regional Fire Protection Workshops.
10/3/84	Memorandum from R.H. Vollmer to F. Rosa regarding assignments made by Fire Protection Policy Steering Committee to the Fire Protection Working Group.
10/4/84	Memorandum from H.R. Denton to W.J. Dircks regarding status of 5/2/84 DPO processing. DPO is not yet resolved, but plan of action for resolution is provided.
10/4/84	Memorandum from R.H. Vollmer to Fire Protection Policy Steering Committee forwarding agenda for fourth meeting of FPPSC on 10/10/84.

10/4/84	Memorandum from W.J. Dircks to Commissioners disagreeing with Commissioner Asselstine regarding widespread problem of NRC staff erroneously interpreting Appendix R regulation.
10/9/84	Memorandum from S. Trubatch to D. Garner et al commenting on the 9/6/84 letter from the Nuclear Utilities Fire Protection Group.
10/12/84	Memorandum from H.R. Vollmer to Fire Protection Policy Steering Committee forwarding agenda for fifth meeting of FPPSC on 10/17/84.
10/12/84	Memorandum from R.H. Vollmer to H.R. Denton et al forwarding summary of the second meeting of the Fire Protection Policy Steering Committee on 9/27/84
10/19/84	Memorandum from R.H. Vollmer to H.R. Denton et al forwarding summary of the third meeting of the Fire Protection Policy Steering Committee on 10/2/84.
10/19/84	Memorandum from R.H. Vollmer to H.R. Denton et al forwarding summary of the fourth meeting of the Fire Protection Policy Steering Committee on 10/10/84.
10/19/84	Memorandum from R.H. Vollmer to the Fire Protection Policy Steering Committee forwarding agenda for sixth meeting on 10/22/84.
10/26/84	Memorandum from R.H. Vollmer to H.R. Denton forwarding brief summary of the fifth and sixth meetings of the Fire Protection Policy Steering Committee on 10/17/84 and 10/22/84.
10/26/84	Memorandum from the Fire Protection Policy Steering Committee to W.J. Dircks submitting FPPSC report and recommendations in accordance with EDO direction.
11/2/84	Memorandum from W.J. Dircks to NRC Program Office Directors and Regional Administrators requesting comments on Fire Protection Policy Steering Committee recommendations.
11/6/84	Memorandum from F. Rosa to the Fire Protection Policy Steering Committee forwarding The Report of The Working Group.
11/13/84	Memorandum from G.H. Cunningham to V. Stello regarding Fire Protection Policy Steering Committee recommendation regarding not granting further schedular exemptions.
11/14/84	Memorandum from R.D. Martin to V. Stello providing Region IV comments on Fire Protection Policy Steering Committee report and recommendations.
11/14/84	Memorandum from J.B. Martin to V. Stello providing Region V comments on Fire Protection Policy Steering Committee report and recommendations.
11/14/84	Memorandum from J.G. Keppler to V. Stello providing Region III comments on Fire Protection Policy Steering Committee report and recommendations.

11/15/84	Memorandum J.P. O'Reilly to V. Stello providing Region II comments on Fire Protection Policy Steering Committee report and recommendations.
11/15/84	Memorandum from R.C. DeYoung to V. Stello providing IE comments on Fire Protection Policy Steering Committee report and recommendations.
11/16/84	Memorandum from W.V. Johnston to R.H. Vollmer submitting for consideration suggested changes to Appendix R questions and answers.
11/19/84	Memorandum from W.V. Johnston to H.R. Denton commenting on Fire Protection Policy Steering Committee report and recommendations.
11/19/84	Memorandum from H.R.Denton to V. Stello providing NRR comments on Fire Protection Policy Steering Committee report and recommendations.
11/27/84	Memorandum from T.E. Murley to V. Stello providing Region I comments on Fire Protection Policy Steering Committee report and recommendations.
11/27/84	Memorandum from F. Rosa to H.R. Denton recommending that no action be taken on DPO submitted 5/2/84. DPO fails to justify modification of management decisions or policy positions on fire protection issues.
12/10/84	Memorandum from W.J. Dircks to V. Stello et al regarding questions raised by comments on Fire Protection Policy Steering Committee recommendations that must be answered before consideration of the fire protection issue by Commission. FPPSC report should be released to the PDR for comment by interested parties, and staff should prepare a Commission Paper on fire protection issues.
12/16/84	Memorandum from F. Rosa to H.R. Denton forwarding markup of Standard Tech Specs for Fire Protection, as agreed in 11/16/84 meeting of the Fire Protection Working Group.
12/19/84	Memorandum from W.V. Johnston to T.M. Novak responding to questions from Chairman Palladino regarding use of gas system as primary fire suppression system in cable spreading room.
12/28/84	Memorandum from R.H. Vollmer to V. Stello et al regarding questions identified by EDO in 12/10/84 memo. FPPSC report being sent to PDR.
1/3/85	Memorandum from R.H. Vollmer to F.Rosa requesting that appropriate members of the Fire Protection Working Group be convened in response to the EDO's 12/10/84 memo directing development of a Commission Paper on fire protection issues.
1/3/85	Memorandum from V. Stello to R.H. Vollmer confirming that Stello will not provide input to NRR regarding Commission Paper on fire protection. CRGR (of which Stello is Chairman) will review the fire protection issue.
1/15/85	Request for Comment on Fire Protection Policy Steering Committee Report; published this date in Federal Register (50 FR 2056).

/15/85	Generic Letter 85-01; transmitted Fire Protection Policy Steering Committee report to all licensees for information and comment.
2/7/85	Memorandum from F. Rosa to H.R. Denton regarding status of DPO submitted 5/2/84; actions for DPO resolution are listed.
2/14/85	Letter from Nuclear Utilities Fire Protection Group (J.M. McGarry) to H.R. Denton commenting on Fire Protection Policy Steering Committee recommendations.
	(NOTE: Letters from individual licensees, supporting the NUFPG comments and providing additional licensee perspectives, are referenced and responded to in the 5/3/85, 6/24/85, and 9/17/85 items in the listing below.)
2/14/85	Temporary Instruction (TI) 2515/62, Revision 2, "Post Fire Shutdown, Emergency Lighting and Oil Collection Capability At All Operating Plants."
3/7/85	Memorandum from R.H. Vollmer to J.N. Grace et al notifying of Fire Protection Policy Steering Committee meeting on or about 4/1/85 to review previous FPPSC recommendations in connection with preparation of Commission Paper directed by EDO memo of 12/10/84.
3/20/85	Memorandum from T. Speis to J. Knight regarding risk perspectives on fires in nuclear power plants.
5/3/85	Memorandum from R.H. Vollmer to H.R. Denton forwarding updated Fire Protection Policy Steering Committee recommendations and fire protection guidance documents for NRR action in responding to 12/10/84 EDO memo.
6/24/85	Memorandum from H.R. Denton to W.J. Dircks forwarding updated recommendations on fire protection policy and program actions. Responds to 6/8/84 memo from Commission, 12/10/84 memo from EDO, and the 5/3/85 memo from the Fire Protection Policy Steering Committee. A Commission Paper with eight enclosures is enclosed.
7/22/85	Memorandum from J.H. Conran to R. Bernero et al providing summary and issue identification for fire protection related package to be reviewed by CRGR at Meeting No. 79 on 7/24/85.
8/20/85	Memorandum from V. Stello to W.J. Dircks forwarding Minutes of CRGR Meeting No. 78 on 7/8/85, including summary of a briefing by NRC staff on recommended fire protection policy and program actions.
8/21/85	Memorandum from V. Stello to W.D Dircks forwarding Minutes of CRGR Meeting No. 79 on 7/24/85, including summary of CRGR review of proposed new Fire Protection Interpretations and Guidance Package, and CRGR recommendations for EDO action on package.

8/23/85	Memorandum from Nuclear Utilities Fire Protection Group (W. Counsil et al) to W.J. Dircks requesting oportunity to review fire protection guidance package to be sent to Commission, and to provide comments either in writing or in a meeting with NRC staff.
9/17/85	Memorandum from V. Stello to H.R. Denton recommending EDO approval of proposed Fire Protection Package to be sent to Commission, subject to one caveat regarding criterion for considering further schedular exemption requests.
9/17/85	Memorandum from W. J. Dircks to The Commissioners (SECY-85-306) providing NRC staff recommendations for expediting and improving implementation of Appendix R fire protection requirements.
9/20/85	Memorandum from J. Stang to J.A. Zwolinski advising of review of SECY-85-306; SECY paper adequately addresses concerns raised in DPO submitted 5/2/84.
9/30/85	Letter from W.J. Dircks to W. Counsil et al responding to 8/23/85 letter requesting opportunity to comment on fire protection package to be sent to Commission. Request denied; paper must considered predecisional.
10/2/85	Letter from Nuclear Utilities Fire Protection Group (W. Counsil et al to Chairman Palladino requesting the opportunity for the Group to present its views to Commission on proposed fire protection guidance package after 10/3/85 briefing by NRC staff.
10/3/85	Transcript of Commission Meeting on this date to discuss fire protection issues (SECY-85-306).
10/17/85	Memorandum from S. Crockett to W.V. Johnston providing OGC's draft response to NRC staff's replies to 5/29/84 Trubatch memo regarding legal questions about proposed new Appendix R interpretations.
10/18/85	Draft Commission Paper by R. Ferguson summarizing the views of those individuals who have differing professional opinion regarding certain new staff positions.
10/24/85	Memorandum from M.G. Malsch to the Commissioners providing OGC evaluation of proposed new Appendix R interpretations and views expressed in 5/29/84 Trubatch memo.
10/25/85	Memorandum from J.M. Ulie to J.G. Keppler responding to 10/3/85 Commission request for statement by DPO originators regarding Fire Protection Policy Sterring Committee recommendations incorporatewd in Generic Letter 85-01.
10/25/85	Memorandum from C. Ramsey to J.G. Keppler responding to 10/3/85 Commission request for statement by DPO originators regarding Fire Protection Policy Steering Committee recommendations incorporated in Generic Letter 85-01.
10/31/85	Statement of Differing Professional Opinion by L.E. Whitney concerning (Appendix R) Interpretation 3.

10/31/85	"Views of Steven D. Richardson on DPO dated 10/31/85"
11/5/85	Memorandum from W.J. Dircks to the Commissioners regarding 10/31/85 DPO, advising the Commission of DPO because Commission has the interpretations issue raised under consideration currently. Licensees must request exemption if Section III.G.2 requirements are not met regardless of this (contended) interpretation.
11/5/85	Vote Sheet of Chairman Palladino on SECY-85-306.
11/6/85	Memorandum from S.J. Chilk to W.J. Dircks et al regarding staff requirements resulting from Commission discussion of SECY-85-306 on 10/3/85.
11/12/85	"Views of Phillip F. McKee on DPO dated 10/31/85"
11/12/85	Memorandum from L.E. Whitney to S.D. Richardson advising that processing of 10/31/85 DPO may not be appropriate in view of expected near-term Commission action on Appendix R.
11/14/85	Memorandum from C. Ramsey to R. Ferguson supplementing 10/25/85 memo commenting on Fire Protection Policy Steering Committee recommendations.
11/18/85	Memorandum from W.J. Dircks to J.K. Asselstine regarding cost-benefit analysis of the new or different Appendix R interpretations requested in 10/4/85 memo.
11/18/85	Memorandum from J.M. Taylor to L.E. Whitney regarding 10/31/85 DPO. Office Director's determination is that DPO fails to justify modification of the staff decision to implement contended interpretation or existing agency practice in evaluating exemption requests.
11/25/85	Memorandum from L.E. Whitney to J.M. Taylor stating that impartial review group consideration of 10/31/84 DPO is unnecessary; review of issues by Commission prior to vote on proposed (Appendix R) Interpretation 3 is satisfactory resolution.
11/26/85	Letter from Nuclear Utilities Fire Protection Group (W. Counsil et al) to Chairman Palladino advising that Group is supportive of NRC staff positions stated in SECY-85-306 (made public at 10/3/85 Commission meeting), with three limited clarifications. Formal presentation of views to Commission on fire protection not necessary.
11/27/85	Memorandum from F. Rosa to H.R. Denton recommending that no action need be taken in respunse to 5/2/84 DPO. DPO fails to justify modification of cf management decision, proposed policy, or a proposed or existing practice in fire protection.
12/3/85	Memorandum from W.J. Dircks to The Commissioners (SECY-306A) providing report on current fire protection enforcement actions as requested in 11/6/85 memo.

12/18/85	Memorandum from W.J. Dircks to the Commissioners advising that resolution of Fire Protection DPOs is complete; originators do not desire to appeal.
12/19/85	Memorandum from W.J. Dircks to The Commissioners (SECY-85-306B) recommending that fire protection program commitments be included in FSAR update and forwarding a revised standard fire protection license condition.
12/26/85	Memorandum from W.J. Dircks to the Commissioners providing available information concerning suggested schedules for affected licensees to comply with Appendix R requirements.
12/30/85	Memorandum from W.T. Russel to R.H. Vollmer providing comments on proposed Generic Letter on Fire Protection.
1/9/86	Vote Sheet of Chairman Palladino on SECY-85-306B.
1/10/86	Memorandum from M.G. Malsch to the Commissioners commenting on the Standard Fire Protection License Condition proposed by the staff in SECY-306B.
1/26/86	Memorandum from J.N. Grace to J.M. Taylor regarding guidance for evaluating schedular exemption requests for facilities with expired 50.48(C) schedules.
2/10/86	Memorandum from J.K Asselstine to other Commissioners regarding SECY-85-306 (and 306A and 306B).
2/10/86	Vote Sheets of Commissioner Asselstine on SECY-85-306 and SECY 85-306B.
2/18/86	Vote Sheets of Commissioner Zech on SECY-85-306 and SECY-85-306B.
2/20/86	Memorandum from J.K. Asselstine to V. Stello requesting information regarding licensees' use of proposed new Appendix R interpretations in SECY-85-306 and effects on compliance schedules.
2/22/86	Vote Sheet of Commissioner Bernthal on SECY-85-306B.
2/27/86	Vote Sheets of Commissioner Roberts on SECY-85-306 and SECY-85-306B.
3/7/86	Memorandum from S.J. Chilk to V. Stello regarding Commission approval for issuance of a generic letter to promulgate new Appendix R interpretations and guidance.
3/11/86	Memorandum from V. Stello to J.K. Asselstine responding to 2/20/86 request for information regarding licensees' use of proposed new Appendix R interpretations and guidance, and effects on compliance schedules.

3/12/86	Memorandum from S.J. Chilk to J.K. Asselstine advising of issuance of staff requirements memo on implementation of Appendix R; also discontinuing action on COMJA-86-4 per request.
3/19/86	Memorandum from J.K. Asselstine to V. Stello requesting SERs for CP&L's and Northeast Utilities's plants.
4/24/86	Generic Letter 84-10; transmitted new Commission approved Appendix R interpretations and implementing guidance to all affected licensees.
4/25/86	Memorandum from D.G. Eisenhut to All NRR Division Directors regarding notification of licensees regarding Appendix R implementation schedules, and subsequent tracking by NRC staff.
6/3/86	Memorandum from J. Lieberman to J.H. Sniezek et al forwarding suggested response to Commissioner Asselstine regarding enforceability of FSAR commitments.
6/5/86	Memorandum from W.T. Russel to T.M. Novak et al informing that additional generic letter to provide guidance on requesting fire protection Tech Spec changes will not be issued.
6/10/86	Memorandum from J.L. Milhoan to T.M. Novak providing summary of points covered at 5/15/86 meeting with Div. of Licensing regarding implementation of fire protection requirements.
7/16/86	ACRS Letter to Chairman Zech regarding fire protection research and fire-related systems interactions.
7/17/86	Memorandum from J.Taylor to Regional Adminstrators (Enforcement Guidance Memo 86-04).
8/11/86	Memorandum from L.E. Whitney to S.D. Ebneter et al forwarding agenda, list of attendees, and minutes for 5/7/86 meeting regarding post-fire shutdown (SECY-85-306).
10/1/86	Memorandum from J.G. Partlow to S.D. Ebneter regarding post-fire safe shutdown inspection procedure.
3/16/87	Inspection Procedure 64100, "Post Fire Shutdown, Emergency Lighting, and Oil Collection Capability At Operating and Near term Operating Facilities."
3/16/87	Inspection Procedure 64150, "Triennial Post Fire Safe Shutdown Capability Reverification."
3/27/87	Memorandum from V. Stello to The Commissioners (SECY-87-84) providing information regarding pending violations of fire protection requirements, and recommending final disposition of long pending escalated enforcement actions.
3/30/87	Memorandum from J.H. Sniezek to J. Thoma et al requesting that each licensee be sent a letter regarding fire protection implementation schedules.

4/9/87	Vote Sheet of Commissioner Carr on SECY-87-84.
4/14/87	Vote Sheet of Chairman Zech on SECY-87-84.
4/21/87	Vote Sheet of Commissioner Roberts on SECY-87-84.
4/27/87	Vote Sheet of Commissioner Bernthal on SECY-87-84.
5/1/87	Vote Sheet of Commissioner Asselstine on SECY-87-84.
5/1/87	Memorandum from S.J. Chilk to V. Stello forwarding staff requirements in connection with Commission consideration of SECY-87-84.

FITNESS FOR DUTY

Although the subject of the Commission's Policy Statement on the Fitness for Duty of Nuclear Power Plant Personnel was not addressed by the Subcommittee during the time that I was present at the June 11, 1987 Hearing, I have reviewed the transcript of testimony provided by Mr. Bush and Mr. Kelly of the NRC staff. Based upon this review, I believe that it is important that the Subcommittee receive my own perspective on this issue. Additionally, as the senior member of the NRC staff, I wish to provide the staff's management position on several matters covered by the testimony of Messrs. Bush and Kelly.

As described in Mr. Bush's testimony, during the 1982-1983 time frame, the staff proposed rulemaking on the fitness for duty of nuclear power plant personnel. The proposed final rule, which was submitted to the Commission in August 1983 following a public comment period, was a short, broadly written regulation requiring licensees to establish and implement written procedures designed to provide reasonable assurance that licensee and contractor personnel with unescorted access to protected areas are not under the influence of alcohol or other drugs that could affect their facilities in any way contrary to safety. The proposed rule did not address such issues as drug testing or actions to be taken in the event of a person's involvement with drugs.

As the Subcommittee is aware, the Commission subsequently decided to defer the rulemaking. Instead, the Commission chose to issue a Policy Statement which (1) recognized and accepted the commitment of all nuclear utilities to develop and implement comprehensive fitness for duty programs, and (2) defined the Commission's expectations that industry programs include effective monitoring and testing procedures and that prompt actions be taken to immediately remove the access authorization of persons found to be involved, under any circumstances, in the sale, possession or use of drugs.

The testimony of Mr. Bush described the Commission's course of action in this matter as being characterized by an atmosphere in which, in his opinion, the

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industry was dictatorial and intimidating, resulting in NRC's buckling to industry pressure. I do not agree with that characterization. In the aftermath of the accident at Three Mile Island, the nuclear industry realized that continued safe nuclear operations and the viability of the nuclear energy option would heavily depend upon the ability of the industry to manage itself by identifying safety problems, initiating programs to solve those problems on an industry-wide basis, and ensuring that corrective actions are taken. The Nuclear Utility Management and Resources Committee (NUMARC) was borne out of that realization. One of the first safety problems which NUMARC chose to address and to present to the Commission was the matter of fitness for duty. Given the general nature of the proposed rule and the emerging national debate over human rights, legal and constitutional issues on drug testing, I believe that the Commission chose to recognize and encourage the industry's initiative in self-management by accepting a program which, except for the matter of enforceability by NRC, was more detailed and comprehensive than the rule proposed by the staff. During this process, the Commission was in control, not the industry. The final Policy Statement accepting the industry program, including the Commission's expectations on testing and disciplinary measures, was written by the Commission itself and those provisions were agreed to by NUMARC.

Let me now address the matter of NRC's ability to take enforcement actions regarding fitness for duty matters. There was extensive testimony on the legal effect of the Commission's Policy Statement on Fitness for Duty of Nuclear Power Plant Personnel. Some of this testimony is either incorrect or incomplete on a number of significant legal issues. While it is true that a policy statement does not by itself expand the Commission's enforcement authority or provide any additional bases for enforcement action, that does not mean that the Commission lacks full authority to act if plant safety is potentially affected because a person is unfit for duty.

Because it is not adopted in accordance with the rulemaking procedures of the Administrative Procedure Act, a policy statement may not affect substantive obligations; rather, it serves as a statement of purpose or future intent to deal with an issue in a particular way. As noted in the Fitness for Duty statement, nothing in the policy statement limits the authority of the Commission to issue orders, call enforcement meetings, suspend licenses or take other enforcement action when regulatory requirements are not met or a safety problem is found. Since NRC has no specific regulations which require licensee personnel to avoid any use of alcohol or drugs that might impair their performance and has no legal requirements for licensees to develop and maintain fitness for duty programs, any enforcement action by way of orders or license modifications, suspensions and revocations would not be based on alcohol or drug use per se or the simple failure by a licensee to develop or maintain a fitness for duty program. Instead, an additional showing would be made that the alcohol or drug use at issue or the failure to develop or maintain a fitness for duty program caused or has the potential for causing a safety problem. We could and would take enforcement action in any case where information available to us indicates that nuclear safety could potentially be affected by virtue of a licensee's failure to adequately address involvement drugs by persons with access to a nuclear power plant.

In sum, while a policy statement of itself does not form the basis for enforcement action, the Commission has the authority to order remedial action to correct a potentially unsafe condition, without regard to whether the NRC policy is embodied in a policy statement or a regulation. In addition, with respect to licensed operators, 10 CFR 55.40 specifically provides for suspension, revocation or modification of a license for conduct determined by the Commission to be a hazard to safe operation of the facility.

It was further stated, in response to a question at the hearing, that there is no requirement in NRC regulations that licensees assure that security is adequate, or that employees are free of drugs or alcohol, or are awake on the job, or are not engaged in distracting sexual practices. This statement is misleading, in that it leads one to conclude that the NRC cannot act to remedy instances of inadequate security or personnel inattentiveness to duty. Indeed, the Commission recently ordered the shutdown of the Peach Bottom facility in Delta, Pennsylvania on account of operator sleeping and inattentiveness to the job. This action was taken pursuant to the Commission's uthority under the Atomic Energy Act of 1954, as amended, and the Commission's regulations. While there is no regulation which explicitly states that "sleeping" is prohibited, 10 CFR 50.54(k) establishes as a license condition for all nuclear power reactors that "[a]n operator or senior operator licensed pursuant to Part 55 of this Chapter shall be present at the controls at all times during the operation of the facility." Inherent in such a requirement is the proposition that to be "present at the controls" means the operator must be fully aware of plant status at all times. Thus, 10 CFR 50.54(k) prohibits sleeping or otherwise inattentive operators on duty in the control room.

My review of the testimony provided by Mr. Kelly indicates that the Subcommittee may have been left with the impression that, absent specific regulations on matters such as fitness for duty, NRC does not have a basis for directly investigating safety allegations received by NRC, but must instead refer them to the licensee for action. That is not the case. The NRC has the thority to conduct direct inspections or investigations (conducted by the fice of Investigations) into any matter which could affect nuclear safety. lowever, in the interest of effective resource utilization, we do have a Commission approved policy of referring allegations to licensee management for their investigation and, if appropriate, corrective action. In each case, the licensee is requested to report to the NRC on the results of their review and any subsequent actions. Allegations are not referred to licensees, but are reviewed directly by the NRC, in those cases where (1) the information cannot be released in sufficient detail to be of use to the licensee without compromising the identity of the alleger, or (2) the licensee could compromise an ongoing NRC inspection or investigation because of knowledge gained from release of the information. Clearly, we would not knowingly refer an allegation for licensee managements' action in any case where there was an indication that the licensee would be unwilling or unable to comprehensively and aggressively investigate the matter.

Finally, I want to assure the Subcommittee that the staff and the Commission are not yet finished in their development of a long term stance on the important ubject of ensuring that nuclear power plant operations are free of the effects of drug abuse. From the start, the Commission has taken the position that its

Policy Statement recognizing the industry program represents an interim evaluation period during which valuable experience can be gained from industry's progress. Following about eighteen months of experience under the Policy Statement, the staff will reevaluate the status of fitness for duty programs and made a recommendation to the Commission. Over the past two years, the constitutional, other legal issues and considerations for human rights vs. the public safety have slowly begun to move towards resolution. Over the next year, we will be in a better position to initiate any needed improvements in our regulatory policy.

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FERMI II

In regard to the analysis of the investigation of the Fermi II Nuclear Power Plant addressed by Eugene T. Pawlick, Director, Office of Investigations, Region III, and John Sinclair, Operations Officer, Office of Investigations, the analysis was prepared because the Office of Investigations indicated that it had found that senior managers of Detroit Edison Company which is licensed to operate the Fermi facility had knowingly withheld information from the Commission which they perceived could have adversely affected obtaining a full power license. This was a very serious finding which if supported by the evidence warranted strong enforcement action including the removal of the involved managers. This action would need to be taken regardless of whether the plant was operating at the time because of the potential impact on safety that could be caused by managers with questionable integrity. The purpose of the analysis was to determine if sufficient evidence existed to support enforcement action. The analysis was based on a completed OI report which was signed and dated.

The staff believes that the analysis was an objective review of the evidence obtained in the investigation. A reader of the analysis, which has not been publicly released can draw his or her own conclusions regarding the matter. It is noteworthy that NRC has received an allegation concerning the preparation of the analysis which resulted in an investigation of the purpose and preparation of the analysis by the Commission's Office of the Inspector and Auditor. Their report was also reviewed by the Department of Justice's Office of Government Integrity. Neither office found any improper action.

Two points, however, should be made regarding the analysis and testimony before the committee. First, from a technical and regulatory view the significant issue arising out of the subject matter investigated was not the premature criticality, but rather the improper manipulations of the control rods which resulted in the premature criticality. The company had informed the NRC about the control rod error. However, neither the Regional Administrator, his Deputy, or the Deputy Director Office of Nuclear Reactor Regulation had been informed

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f the rod error. Thus they were properly concerned when they learned of the premature criticality caused by the rod pull error. NRC has taken action concerning the communication breakdown within the agency.

The second issue has to do with the interpretation of the term Material False Statement as used in the Atomic Energy Act. In the past a material false statement charge had not been applied to the factual situation arising in the Fermi matter. Thus the analysis addressed a novel and complex issue which the Commission had not previously considered. The Office of General Counsel did not review or address the legal analysis which was done for the staff enforcement action. OGC did review the proposed OI referral letter to the Department of Justice and commented on it. Admittedly, the subject of material false statement under the Atomic Energy Act is difficult. The new rule currently being considered should substantially clarify this area. If the new rule was in place the Fermi issue would be clearly covered by it.

Finally, as a result of the OI investigation, the Commission issued a $300,000 civil penalty and an Order which among other things removed the shift supervisor involved in the rod error.

EMPLOYMENT RESTRICTIONS ON INDIVIDUALS AND THE PROPOSED RULE ON COMPLETENESS AND ACCURACY OF INFORMATION

One staff witness (not a lawyer) was asked what the present law provides as to potential penalties where a high official of a utility has participated in withholding critical information required to be transmitted to the NRC. In the course of answering this question, the witness opined, among other things, that he thought the NRC lacked the power to preclude a manager involved in a cover-up of information from working at any nuclear power plant in the country. Tr. 217-18. This very issue, and related issues, are currently under active review by the Office of the General Counsel. It is not the conclusion of that Office that the Commission lacks such authority. The Commission has clear authority to order a utility not to employ a specified individual, if the Commission determines that employment of that individual could pose a threat to the health and safety of the public. See, e.g., Niagara Mohawk Power Corp. (Nine Mile Point Nuclear Station), Order for Modification of License (Effective Immediately) and Order to Show Cause, November 26, 1980. The Commission has also had occasion to ban the transfer of specified individuals from one licensed facility to another without prior approval of the NRC. Radiation Technology, Inc., Order Suspending Licenses (Effective Immediately), June 23, 1986. Indeed, while the Office has not formulated a definitive legal position on this matter, preliminary analysis indicates that the Commission has the power to require an individual to give the Commission prior notice of his intention to become employed at any nuclear power facility in the country. This notification requirement would then enable the Commission to decide whether it should issue an order to the facility involved, prohibiting the employment of such individual in a responsible position at that utility.

Finally, the witnesses offered some interpretations of the NRC's proposed rule on Completeness and Accuracy of Information. Tr. 219-224. In response to a question, it was stated that if the proposed rule becomes final, if a licensee should determine that a premature criticality is not "significant", then it could withhold that information from the NRC. Tr. 219. However, a licensee cannot evade the rule by never "finding" information to be significant; there are objective indicia of recognition that can be used by the NRC in determining whether a licensee in fact recognizes the significance of the information in question. Moreover, it should be noted that abuse of a licensee's responsibility to report "significant" information can be addressed by the Commission under its authority to issue orders to modify, suspend or revoke a license. As the Statement of Considerations accompanying the proposed rule pointed out, "an order would be appropriate where the action of a licensee in not recognizing the significance of information and failing to report it, together with other relevant facts, raises serious questions about either its competence, i.e., its ability to evaluate information, or its trustworthiness, i.e., its failure to consider potentially significant information for evaluation." 52 Fed. Reg. at 7436 (March 11, 1987).

Several statements were made concerning whether oral communications were covered under the proposed rule, either as material false statements or otherwise. One witness said they were not; the next witness said they were, but added that under the proposed rule it is up to the utility to determine what is material, significant, and safety-related. Tr. 220-224.

The area of material false statements is a complicated one, and reference should be made to the Statement of Considerations accompanying the proposed rule for a fuller understanding of what is encompassed. Simply put, however, oral statements will continue to be covered under the proposed rule. The label "material false statement" will only attach to the most egregious of violations, either oral or written.

Paragraph (a) of the proposed rule contains a general provision which codifies the current policy which requires that all information (whether written or oral) provided to the Commission by an applicant or licensee or required by the Commission to be maintained by the applicant or licensee shall be complete and accurate in all material respects. It is in no way dependent on a licensee's determination as to materiality, significance, or safety, as the June 11 testimony would suggest. Further, violations of paragraph (a) of the proposed rule would permit the use of the same wide range of sanctions which are now available to the Commission for material false statements. Paragraph (b) contains a reporting requirement to replace the full disclosure aspects of the current material false statement policy that would require applicants and licensees to report to the NRC information identified by the applicant or licensee as having a significant implication for the public health and safety or common defense and security. While paragraph (b) defers to the licensee's judgment of the significance of information, the licensee's "identification" of the significance of the information need not be in the form of a specific documented decision before a violation of the rule exists, if circumstantial evidence establishes that the applicant or licensee recognized the information as significant. Moreover as noted above, abuse of a licensee's responsibility under paragraph (b) can be addressed by the Commission under its authority to modify, suspend or revoke a license.

I hope these comments have been helpful in clarifying for the subcommittee some important areas of legal interpretation.

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ITEM B

DOJ/TMI Investigation

Allegation

For six months prior to the meltdown, at least one NRC inspector knew that crucial reactor test data at TMI was being falsified. TMI information was not included in initial NRC reports and was not reported to Justice Department prosecutors for over one year.

Response

In 1986 the FBI conducted an investigation of this allegation. A copy of the FBI report on this subject is in the possession of the Committee and is available for review upon request.

ITEM C

Nuclear Pharmacy, Inc. and Stepan Chemical

Allegation -

Compromised investigations of wrongdoing by NRC licensees (Nuclear Pharmacy, Inc. and Stepan Chemical) by revealing potentially incriminating materials to the targets of the investigation.

Response - Nuclear Pharmacy, Inc.

In a letter to Senator Glenn dated April 28, 1987, copy attached, I stated the following:

> During the fall of 1979, numerous meetings were held with FDA and others. As these meetings progressed it began to look as though NPI's actions were less serious than originally believed. Nevertheless, in October of 1979 OIA had referred the NPI case to DOJ. At that point NRC lawyers were in touch with DOJ. At no time did the lawyers from DOJ indicate that the NRC should refrain from contacting the licensee.
>
> NPI thereupon requested one final meeting to present their side of the case. This meeting took place on January 21, 1980...Its only purpose was to hear whether NPI had any new information; not to make any concessions on the part of the NRC....Subsequent to that meeting I was informed that Mr. Greenspun had taken the position that there should be no contact between the NRC and NPI, and that the meeting had compromised the DOJ case....In a letter dated November 20, 1981, from Mr. Greenspun to the Attorney for NPI, he stated that DOJ had decided to defer prosecution, and that the decision "is substantially based on NPI's representation that it has rectified the activities in question and will continue to comply with NRC rules and regulations."

In both the Nuclear Pharmacy, Inc., case and the Stepan Chemical Cases, the NRC continued to pursue investigation of the health and safety issues after DOJ had been informed of the issues. DOJ did not object in either case.

Response - Stepan Chemical

This allegation apparently is based on a belief that the investigation should have been handled all along as a criminal investigation.

By way of background, a memorandum prepared by Stepan Chemical's law firm discussing the situation was delivared anonymously to OGC in October 1980. OGC referred it to IE for appropriate investigation. OIA referred the case to DOJ in June of 1981. DOJ cited the following reasons for declining prosecution.

1. the omission of the 3rd burial location from the license application was of marginal materiality;
2. lack of health and safety significance
3. the individuals involved did not gain financially and no one was injured; and,
4. DOJ was informed of the potential criminal violation only after NRC had interviewed the suspects, thus increasing the likelihood of alibi defenses.

In a memorandum to James Cummings, OIA, dated August 7, 1981, copy attached, I stated that:

> ...I fail to see how one can argue that the matter should have been handled as a criminal

> investigation based solely on the contents of that memorandum. (That would, of course, require immediate referral to DOJ as NRC lacks the authority to do purely criminal investigations.) Indeed, it should be noted that OGC reviewed the memo and then referred it to IE for appropriate investigation as a matter falling within this Office's responsibilities. I might add that OIA was provided a copy at that time, and the matter was discussed with Roger Fortuna, Assistant Director for Investigations, on several occasions....I recall that no one in OIA suggested that the case was at that stage, a purely criminal matter or that NRC should exercise any of the "special handling" called for in the MOU....No one, including me, felt that it was appropriate to pursue this as a criminal investigation until such time as the health and safety/regulatory issues had been investigated.

It should be noted that DOJ also indicated that pursuit of civil remedies might under the circumstances be more effective. In fact, IE proposed and ultimately collected a $20,000 civil penalty. The cited violation was based on impeding an NRC inspection/investigation.

In both the Nuclear Pharmacy, Inc., case and the Stepan Chemical Case, the NRC continued to pursue investigations of the health and safety issues after DOJ had been informed of the issues. DOJ did not object in either case.

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

May 1, 1987

MEMORANDUM FOR: Addressees

FROM: Victor Stello, Jr.
Executive Director for Operations

SUBJECT: LETTER TO SENATOR GLENN CONCERNING TESTIMONY AT HEARING ON APRIL 9, 1987

As you are aware, on April 9, 1987, the U.S. Senate Committee on Governmental Affairs, chaired by Senator John Glenn, held hearings at which a number of allegations were made involving the NRC staff and me personally. Senator Glenn asked me to respond to the testimony. I have done so.

Since my response necessarily touches on allegations affecting the staff, I have enclosed a copy for your information.

Victor Stello, Jr.
Executive Director
for Operations

cc w/encl.
SECY
OI
OIA
OGC
GPA
PDR

MEMORANDUM TO ADDRESSEES FROM VICTOR STELLO, JR., DATED May 1, 1987

James M. Taylor, Acting DEDO
Thomas A. Rehm, Assistant for Operations
William G. McDonald, Director, ARM
Hugh L. Thompson, Jr., Director, NMSS
Eric S. Beckjord, Director, RES
William B. Kerr, Director, SDBU/CR
Edward L. Jordan, Director, AEOD
James Lieberman, Director, OE
Paul E. Bird, Director, OP
James G. Keppler, Director, OSP
Thomas E. Murley, Director, NRR
John M. Montgomery, Director, OC
William T. Russell, Regional Administrator, RI
J. Nelson Grace, Regional Administrator, RII
A. Bert Davis, Regional Administrator, RIII
Robert D. Martin, Regional Administrator, RIV
John B. Martin, Regional Administrator, RV

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

APR 28 1987

The Honorable John Glenn, Chairman
Committee on Governmental Affairs
United States Senate
Washington, DC 20510

Dear Chairman Glenn:

During the course of your Committee's April 9 hearing you offered me the opportunity to provide a written response to a number of issues raised by witnesses who testified at that time. I will appreciate your consideration of my comments because the charges already on the record cannot be evaluated fairly in the absence of a response. I do not believe any organization is perfect. Mistakes are made and from time to time errors in judgment occur. But to cause such issues to reflect on the entire staff of the NRC is fundamentally wrong. I am convinced that the NRC staff includes the most knowledgeable and professional experts on nuclear safety to be found anywhere in the world. The staff is dedicated to essentially the single mandate of protecting the health and safety of the public. I am confident that my response, which includes issues raised regarding certain staff actions, will resolve these issues to your satisfaction.

My sworn and notarized response is enclosed and is respectfully submitted for the Committee's record. In this regard, I am disappointed that my ability to provide more complete information for the record has been inhibited by the decision to limit access by my staff to deposition transcripts which the Committee intends to make public anyway. The restricted transcripts are returned herewith.

Sincerely,

Victor Stello, Jr.
Executive Director
for Operations

Enclosures:
1. Written Statement and
   Detailed Appendix
2. Depositions of Hayes and Mulley

cc: The Honorable William V. Ross, Jr.

I, Victor Stello, Jr., hereby swear that the statements in my "Written Statement Before the Senate Committee on Government Affairs" dated April 28, 1987 and the statements in the "Detailed Appendix to Written Statement" attached thereto are true and correct to the best of my knowledge and belief.

Victor Stello, Jr.
Executive Director
for Operations

Subscribed and Sworn before me
this 28th day of April, 1987,
at Bethesda, Maryland

Malinda L. McDonald
Notary Public
My Commission Expires: 7/1/90

WRITTEN STATEMENT OF VICTOR STELLO, JR.,
EXECUTIVE DIRECTOR FOR OPERATIONS
US NUCLEAR REGULATORY COMMISSION

BEFORE THE SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS
APRIL 28, 1987

On April 9, 1987, the U.S. Senate Committee on Governmental Affairs conducted a hearing on "The Need for an Inspector General at the NRC." During that hearing three NRC employees and a former Department of Justice attorney made a number of allegations concerning me personally and the activities of the NRC staff reporting to me. Senator Glenn invited me to respond in detail to the Committee after I had had an opportunity to review the record.

I believe a perspective concerning the relationships and responsibilities of three Commission offices -- the Executive Director for Operations (EDO), the Office of Inspector and Auditor (OIA), and the Office of Investigations (OI) -- is required. I have three observations derived from the testimony before the Committee which I will discuss in some detail.

First, it is clear that OI, OIA, and the EDO and their respective staffs have not been working well together. Those relationships must improve.

Second, there is a reluctance among some agency employees to report allegations of internal misconduct to OIA or to use the agency differing professional opinion process.

Third, it is perceived by many of the NRC staff that OI places excessive emphasis on criminal matters as a first priority rather than obtaining information to permit the agency to carry out its safety mandate, while at the same time OI perceives that the staff does not sufficiently support investigations of wrongdoing.

The President's Commission on the Three Mile Island Accident (Kemeny Commission) stated, "The huge bureaucracy under the commissioners is highly compartmentalized with insufficient communication among the major offices." (overview p. 21) The Commission's Special Inquiry Group (Rogovin) in its Conclusions and Recommendations on Safety Management Factors (p. 1239) recommended that the NRC "Examine and modify the NRC organization as required to ... assure that safety is implicit in the functions of all offices." (p. 1241) As Chairman Zech pointed out at the hearing (Tr. 73), the NRC has many independent offices, committees, and investigatory units and it is difficult to get all these independent bodies to focus on the agency's primary safety mission. In spite of every major management study of the NRC recommending a single administrator, it is clear that Congress has not been willing to establish a form of organization that would enhance NRC's ability to effectively focus and carry out the agency's safety mandate. Recent efforts to improve the organization of the staff offices reporting to the EDO reflect the Commission's resolve to strengthen NRC's attention to its safety mission. The investigatory mission which ensures the integrity of staff and licensee performance also is important and necessary. The organizational structure of the investigatory functions, however, makes it difficult to prioritize and focus on matters which are of greatest importance to achieving the safety mission.

I need to digress for a moment to explain more fully the basis for my statement regarding the impact of your proposed legislation Tr. (168-9). The observations already noted and issues I will present later suggest to me that the language of the proposed legislation would put further emphasis on the isolation, independence and criminal aspects of OI investigations. Such emphasis would serve to make resolution of the management problems we now face even more difficult. More to the point, it would result in less safety. I am firmly convinced this need not happen. Better working relationships have recently been achieved between NRC and DOJ. Increased management attention to the underlying issues will foster increased understanding by OI and EDO staffs of each others' responsibilities and sharpen everyone's focus on the agency's

fundamental mandate to protect the health and safety of the public. This is a significant management challenge. Decreasing the Commission's management latitude, which I believe the proposed legislation with respect to OI will do, will only compound the problem. One final point in this regard: day to day safety oversight of facilities is an operational responsibility delegated to the EDO and staff offices. It is vital that safety issues investigated by OI be efficiently and effectively integrated into the day to day operations.

The reluctance of some employees to go to OIA for fear of retaliation and damage to their professional careers is not a new problem in this or other agencies. The Commission has put in place "open door" procedures, a differing professional opinion process, and has repeatedly informed employees of their right to go to OIA in confidence. The Rogovin report suggested an agency "ombudsman" for employees who wish to have their safety concerns pursued without risk to their professional career. If an independent IG could overcome the perception that "whistle blowing" is dangerous to one's career no matter how significant the safety concern the employee may have, I would endorse it without hesitation. Whatever mechanism is decided upon, however, should not excuse anyone (the IG, the employee, or line management) from ensuring that the agency's senior responsible safety officials are fully informed at the earliest opportunity of the management issues which could affect the safety mission of the agency.

The principal allegations concerning the EDO and his staff made by witnesses before this committee involved the agency's investigative function of licensee activities rather than its inspector general function. Even the allegations related to NRC employee misconduct were related to "interference" with the investigative function. Since the inception of the Atomic Energy Commission, through the creation of the NRC and continuing until the present, an important tool used to fulfill the Commission's paramount responsibility to protect the public health and safety has been the inspection of licensees and their activities. While inspections identify violations of regulatory requirements, thus enabling prompt and effective enforcement action, the single most

important purpose of inspections, whether or not a violation of requirements is identified, has been, is, and always will be the identification of safety issues so that appropriate actions can be taken to resolve them. The individuals who are best qualified to perform this important function have education, training, experience, and knowledge which is primarily technical in nature.

Historically, these technical inspectors occasionally encountered circumstances which involve wrongdoing and which could have affected safety. The technical inspectors, however, lacked investigatory training and competence to pursue deliberate licensee wrongdoing. Therefore, trained investigators were hired to assist the inspectors in performing the primary functions of identifying and resolving safety issues. As the number of licensees increased there was more frequent need for such assistance. This led to hiring more investigators and eventually to the creation of OI as a separate organization. More importantly, it was recognized that the quality and thoroughness of investigations needed substantial improvement. OI is comprised of individuals whose background, training, experience and interest is in perfecting criminal investigations. As professionals in that line of work, OI personnel are naturally oriented to obtaining information necessary to prosecute and convict individuals rather than being oriented to providing assistance in obtaining safety information for making regulatory decisions. I fully recognize the importance and deterrent effect that criminal investigations, referrals, prosecutions and convictions can have. I fully support that deterrence. I have consistently urged early referral of such matters to DOJ. However, in my view the primary mission of OI and its focus must be first on obtaining information to make regulatory decisions. That information can then be used to support the criminal process under the supervision and direction of DOJ.

Problems which developed between OI, and the EDO staff offices stem from a failure to accept the identification and correction of safety problems as the primary focus of this agency. That focus demands that OI and the EDO offices

work closely together and share whatever information there is which could affect safety decisions. Should OI fail to provide the staff with information needed to make safety judgments and decisions, the staff cannot effectively discharge its responsibilities. It should be noted in this regard that the director of OI is not authorized to take necessary actions to correct safety problems; rather, his responsibility is to relay any safety-related information to the staff promptly.

Many of the concerns raised by Mr. Hayes involve matters which predate actions taken by the Commission to reorganize and refocus agency offices on the safety mission. Earlier problems should not be mixed with whatever problems may exist today. If a safety issue is identified during an investigation, OI field investigators tend to provide the staff with such information promptly. For example, OI efforts have been helpful in achieving the safety mission of the agency in cases such as Radiation Technology, Wright Patterson Air Force Base, Bloomington Hospital, Mercy Hospital, Peach Bottom, American Testing, and Advanced Medical. The information from OI permitted the agency to act promptly, frequently without waiting for the completion of the investigation report. There are also examples of cases where the technical staff provided technical assistance to DOJ during its investigations and grand jury inquiries relating to cases referred to DOJ by OI such as: TMI, Zimmer, D.C. Cook, Advanced Medical and International Neutronics. Close working relationships in these cases proved effective in discharging the agency's safety mission and helped to foster a better understanding and appreciation of the functions of OI and staff. In contrast, when the results of an investigation were needed to decide what regulatory action was necessary, delays in the release of investigatory reports created tension and frustration for both OI and technical staff officers. In my view, the fundamental reason for this latter problem was the undue emphasis on independence of the investigative function. Examples of cases in which this occurred are Fermi, Sequoyah Fuels and the TMI Polar Crane issue. The OIA Comanche Peak investigation, as explained, was of special concern to me from a management perspective.

In my view, the agency's investigatory arm should not have its primary role defined as building a criminal case rather than developing safety information for those in the agency who need it to effectively discharge their duties. The Chairman has made it clear to the directors of OI, OIA and the EDO that each has responsibilities and sufficient latitude to do their respective jobs. Because the EDO offices have the responsibility to act on safety matters, my desire and that of my staff to be promptly informed may be viewed by OI and OIA as "pressure to complete.an investigation". Such perceptions are unfortunate but may be inherent in the conflict between the desire to make prompt safety decisions and the need to conduct a thorough and complete investigation. I address this issue further in the Appendix. When management or safety information is involved, OI and OIA are clearly required to pursue such information on a priority basis in order to ensure that I receive it as soon as possible in order to act in an informed and timely manner.

Concentrating on any area of difficulty can have a tendency to exaggerate its significance. Such is the case, I believe, with the testimony before this Committee on the OI function - including my own comments. The fact is that we are well aware of the problem. The Commission and all of its senior management are committed to its resolution. Indeed, while we have made mistakes in the past, recent indications from the DOJ suggest that matters are getting better. When investigations are accomplished jointly with the technical staff, the results are readily accepted, regulatory action is accomplished promptly and feelings of contributing to the agency mission and job satisfaction are readily apparent.

DETAILED APPENDIX TO WRITTEN STATEMENT OF VICTOR STELLO, JR.
EXECUTIVE DIRECTOR FOR OPERATIONS

Testimony of witnesses presented by the Committee and its staff on April 9, 1987, asserted or suggested the following improper actions on my part or on the part of NRC staff reporting to me and for whom I am fully accountable and responsible. In general those witnesses have asserted that:

- I [we] are opposed to, or at least soft on, criminal prosecutions in the nuclear industry;
- I [we] engaged in actions designed to frustrate successful criminal prosecutions;
- I [we] are "too cozy" with the licensees we regulate as demonstrated by:
  - my telephone call with Mr. White of TVA
  - attempts to control OI's investigations
  - tipping licensees to OI investigations;
- I put pressure on OIA to complete an investigation.

I believe these charges, generally, reflect a misunderstanding of the agency's principal obligation to protect and promote public health and safety. For that reason and also because the charges impugn my personal reputation and performance, I have prepared this response for the record.

I am neither opposed to nor soft on criminal prosecutions. While the NRC has an obligation not to obstruct a DOJ criminal investigation, that obligation

does not include a presumed duty on the part of NRC to conduct criminal investigations either on its own or at the demand of DOJ for purposes unrelated to its safety mission. Therein is the problem, particularly because of the large backlog of pending OI investigations, the results of which are needed to resolve safety issues in a number of cases. Both Mr. Hayes and Mr. Greenspun have criminal investigator/prosecutor backgrounds. It is, perhaps, understandable that, given a lack of technical backgrounds, Mr. Hayes and Mr. Greenspun see things as they do.

The NRC is not primarily a criminal investigatory or prosecuting agency any more than are the agencies which regulate flight safety or food safety or mine safety. But, as is the case with those other agencies, occasionally in the course of carrying out our regulatory responsibilities, we run across conduct which could amount to criminal wrongdoing. When this occurs the matter should be referred to DOJ for appropriate disposition. It is not the function of this agency to attempt to "make" a criminal case for purposes of conviction. Nor is it our primary function to act as an agent of the DOJ and pursue a criminal investigation for that Department. We do, however, cooperate with DOJ and in appropriate cases provide resources to DOJ. Examples of such cooperation were cited earlier. It must be recognized that when we do this, it reduces the limited resources available to us for carrying out our mission of protecting public health and safety. Thus, we have fewer investigators and inspectors to pursue issues directly related to our health and safety mission. For this reason, we must exercise care in employing such resources only where the public health and safety benefits from successful prosecution warrant the resource expenditure.

Concerning the question of whether I took actions designed to frustrate successful criminal prosecutions, Mr. Greenspun addressed issues related to Three Mile Island and accused me of acting improperly regarding those issues. In doing so, he resurrected old issues which have been thoroughly investigated and resolved by both the FBI and a Federal Grand Jury. I could respond specifically to each of his charges, but I do not believe it is necessary. My

reading of the FBI report and my understanding of the Grand Jury's actions lead me to conclude that all of the issues investigated by the FBI and grand jury were resolved by finding no wrongdoing on my part by design or otherwise. I continue to be troubled by the fact that Mr. Greenspun, using his prosecutorial authority, could head an investigation into issues in which he was personally involved. I think his personal involvement is clear from his own testimony before this Committee. Certainly, his own conduct could have been an issue in such an investigation. I leave to others to judge the propriety and ethics of such behavior. I urge you, Mr. Chairman, to obtain a copy of the FBI Report No. 46A-11367, dated July 1, 1986 and examine it. I trust it will demonstrate to your satisfaction that these old charges were resolved contrary to Mr. Greenspun's personal biases.

Mr. Greenspun also stated that he personally requested that I not meet with a licensee under investigation, and that I subsequently engaged in a lengthy discussion with that licensee. He further stated that the meeting "unnecessarily derailed criminal prosecution," that I knew this would be the result, and that I and my deputy "confessed away the case." Having reviewed the documentation of events of over seven years ago, and after discussions with the other participants, I can state that Mr. Greenspun's interpretation is not correct. The particular case referred to involved an NRC licensee named Nuclear Pharmacy, Inc. (NPI).

When I received the proposed enforcement package from NRC Region III in the summer of 1979, it appeared to me that NPI had committed a very serious violation. The Region had cited NPI for shipping containers of Xenon gas, which were not designated as fit for human use, to various hospitals to be used on humans. Review of records indicate that I decided to substantially increase the civil penalty proposed by the Region. Also, I believe my staff and I considered revocation of the license. In June of 1979 as the then Director of the then Office of Inspection and Enforcement (OIE), I referred the case to the NRC Office of Inspector and Auditor (OIA) for possible referral to DOJ, but retained the right to continue investigating health and safety

implications. The notice of proposed civil penalties was sent to the licensee in August. The licensee responded vigorously, insisting that there were no health and safety problems and that, given the wording of its license, its actions might not constitute a violation.

During the fall of 1979, numerous meetings were held with FDA and others. As these meetings progressed it began to look as though NPI's actions were less serious than originally believed. Nevertheless, in October of 1979 OIA had referred the NPI case to DOJ. At that point NRC lawyers were in touch with DOJ. At no time did the lawyers from DOJ indicate that the NRC should refrain from contacting the licensee. Within this time frame, we considered using a form of consent decree in which the licensee would admit culpability. By the end of 1979 it became evident that NPI would not agree to the type of language in the consent decree that I deemed necessary. As a result, NPI was informed that no settlement would be forthcoming.

NPI thereupon requested one final meeting to present their side of the case. This meeting took place on January 21, 1980, and is the one referred to by Mr. Greenspun. Its only purpose was to hear whether NPI had any new information; not to make any concessions on the part of the NRC. Where the public health and safety is concerned, I believe it is my duty to elicit as much information as possible. During the meeting, NPI reiterated its previous arguments. No statements were made by either me or my staff that could be construed as weakening the case against NPI. Subsequent to that meeting I was informed that Mr. Greenspun had taken the position that there should be no contact between the NRC and NPI, and that the meeting had compromised the DOJ case. I do not agree with Mr. Greenspun's interpretation. In a letter dated November 20, 1981, from Mr. Greenspun to the attorney for NPI, he stated that DOJ had decided to defer prosecution, and that the decision "is substantially based on NPI's representation that it has rectified the activities in question and will continue to comply with NRC rules and regulations". In February of 1982, the NRC Staff imposed its civil penalty on NPI.

Another case cited by Mr. Greenspun (Tr. 129) concerns the now abandoned Zimmer facility. He states: "For years NRC inspectors were finding serious problems at the Zimmer plant in their inspections, and were told by the regional office in Chicago not to write it up and in reports but to keep a little notebook of violations he was finding. So, if the inspector got hit by a truck, nobody would know about the violations." This is a new allegation. Current Region III personnel who were closely associated with the NRC inspection of Zimmer during the late 70s and early 80s know of no such allegation or occurrence. Had such an allegation been made to Region III, it would have been referred to OIA. Had such a practice been identified, it would have been corrected.

Mr. Greenspun also alleges that "This plant was about to open, the Zimmer plant, shortly, but for a whistleblower by the name of Applegate, who twice had to go to the NRC after they did a couple whitewash investigations." At the time of the Applegate allegations, construction of the Zimmer plant was not complete and preoperational testing of the plant was in the earliest stages. Hence, the plant was not ready to start operations. The Region III investigators initially reviewed all of Mr. Applegate's allegations and concluded that three warranted NRC investigations. The other allegations concerned matters which were thought to be more properly addressed by other regulatory bodies. The results are documented in Investigation Report No. 50-358/80-09. In the second investigation, the NRC inspectors and investigators looked at all 19 Applegate allegations, four allegations made by quality control inspectors, three allegations received through site interviews, in addition to other areas of NRC concern. The results of the second investigation are documented in Investigation Report No. 50-358/81-13 and resulted in a $200,000 civil penalty against Cincinnati Gas and Electric Company, the licensee, and led to the NRC requiring major corrective action programs and a verification of the quality of completed construction. In retrospect, receipt of the allegations which prompted the second investigation perhaps should have led to the staff's identification of the significant breakdown of QA activities.

Finally, Mr. Greenspun concludes: "So you had a plant that would have opened that was eventually found, the Zimmer plant, to be so unsafe -- once they were publicly exposed, were found so unsafe that they could not allow it to open. But for a whistleblower, that wouldn't have happened and it could have opened." Although Investigation Report 50-358/81-13 documents many problems, the report did not reach the conclusion that the plant was unsafe. These findings, subsequent NRC findings, and licensee inspection findings raised sufficient quality questions that the NRC required the licensee to submit a plan to verify the quality of construction of the plant. Before this plan could be completely carried out, the licensee terminated construction of the nuclear facility with the intention of converting it to a coal fired plant.

In addressing the charges concerning whether my staff or I are "too cozy" with the licensees we regulate, it is necessary to understand that by necessity the technical safety staff and I have daily contact with licensee representatives. We also have daily contact with other members of the public with interest in the matters we regulate. The purpose of these contacts is for the exchange of information. When licensees have questions concerning NRC policy or rules, they do not have to speculate but are perfectly free to pick up the phone, call an appropriate NRC official and request information. To suggest that such contacts are inappropriate reflects a misunderstanding of a public official's duty to be responsive. In fairness one could criticize the staff for being too concerned over the regulatory action needed to correct problems. This in fact was one of the concerns expressed by the OI staff during the meeting I mentioned at the hearing. (Tr. 169-70). In this regard it is of interest that Chapter IV on Safety Management of the Rogovin Report (p. 1241), recommends that NRC announce as a matter of policy "that prosecutorial discretion will be exercised to effect a meaningful balance between enforcement of rules to ensure their accomplishment and yet encourage close cooperation with industry in communications to prevent accidents."

During early 1986 we were also being criticized for not being aggressive enough in identifying issues that needed to be resolved specifically on our

review of the TVA issues. This is an especially difficult issue. If the staff recognizes actions that can be taken to resolve a regulatory concern, should such actions be identified? This is compounded further when the basis for action is derived from an ongoing investigation. Frequently this also involves one or more specific individuals, the disclosure of whose identity could have the potential for interfering with an investigation or prosecution and therefore precludes the staff from identifying these individuals to the licensee. We are then faced with a difficult choice -- keep a facility shut down for months or as long as it takes to complete the investigation and DOJ review when applicable, or risk compromising the investigation by removing and thus disclosing the problem individuals. If DOJ were to prosecute the case the shutdown may extend for years. It is my belief that the public interest is best served when we aggressively resolve regulatory issues. I also believe this is what Congress intended but I recognize it contributes to the unfounded accusation of being "too cozy" with licensees.

We are currently working with DOJ on a memorandum of understanding to structure such discussions to further the statutory missions of both agencies. The proposed legislation involving an independent OI will serve to further distance its investigation efforts from the technical staff responsible for safety. It is in fact important that OI and the staff work together to first identify and correct the safety problems and, by so doing, to assure that facilities can be restored to operation and public service. For example, we frequently attempt to correct safety problems at hospitals or firms serving hospitals through use of our enforcement sanctions, in order that the practice of nuclear medicine can be resumed in the public interest. Examples are Mercy Hospital, Valley Radiological Clinic, Advanced Medical Systems, Bloomington Hospital, and Lakeview Hospital.

During the hearing there were two basic issues related to a phone call between myself and Mr. Steve White of TVA. (As in this case, I routinely return phone calls in the presence of senior staff.) The first issue deals with the adequacy of the OIA investigative process itself in which I had no involvement

other than being interviewed and therefore have no comment. The second issue relates to Mr. Hayes' characterization of the phone call as improper. In contrast, the OIA conclusion regarding this matter as stated in the report dated August 28, 1986, is: "There was no information developed during this investigation to substantiate any impropriety on the part of STELLO during his telephone conversation with WHITE..."

Mr. Hayes' concern over this matter was, as noted in the OIA report, "in light of the fact that we already had an ongoing material false statement investigation." The existing investigation he mentioned in testimony relates to the prior senior TVA nuclear manager attesting to Watts Bar Unit 1 readiness for fuel load in April 1985. That investigation deals with the state of that manager's knowledge of the plant at that time. Subsequent to that, many employee allegations and TVA inspections have indicated that potential quality problems exist at Watts Bar. In fact, the NRC staff's letter to TVA in January 1986 questioning compliance with Appendix B at Watts Bar was based on the work of TVA's own Nuclear Safety Review Staff. Thus, these matters arose subsequent to the April 1985 letter and were not a part of the ongoing OI investigation referred to by Mr. Hayes. Clearly, the telephone call from Mr. White was not related to the investigation of the prior senior TVA nuclear manager. To suggest otherwise would imply the entire NRC review of TVA problems is likewise related to the ongoing investigation of the TVA's April 1985 letter on Watts Bar.

Specifically, now referring to my sworn deposition taken relative to this matter dated July 30, 1986, I identify at least two telephone conversations related to Appendix B issues. In one conversation I indicated to Mr. White that he ought to finish his job and then respond to the letter. Mr. White indicated that he made the commitment to respond by a specific date and would do so. As the facts related to this matter show, Mr. White did in fact respond on March 20, 1986. Mr. White had taken over the leadership of TVA in January 1986 and was therefore on the job only a relatively short time. My concern was that he should have taken the time to understand the overall

status of Q/A problems at TVA before responding. Apparently, he felt constrained by the commitment to respond in a certain timeframe. In fact, conversing on technical issues is part of my job and indeed that of the NRC staff -- as long as the matter itself is not under investigation. As previously stated, this matter was not under investigation. For cases under investigation, we have procedures which cover how such discussions are to be conducted to assure safety issues are resolved while not prejudicing ongoing investigatory activity.

A second conversation with Mr. White concerned the need to assure that he needed to continue to pursue Appendix B issues and to inform the NRC of any significant problems identified related to the Appendix B issue. Indeed our regulations require such activities as discussed during the conversation. By the way of background, I knew Mr. White's previous experience was with the nuclear navy program, which is not governed by the code of Federal regulations used for commercial nuclear facilities.

In summary, both my conversations with Mr. White of TVA, only one of which has been the subject of criticism by Mr. Hayes and about which two of my senior staff members felt "uncomfortable":

- were initiated by Mr. White;

- transmitted no substantive information to Mr. White;

- centered upon emphasizing the needs of the NRC for full and complete information; and

- were in the interest of the regulatory functions of this agency.

In those circumstances I did not then and do not now see anything approaching impropriety in the conversation. Indeed, the sort of contacts with licensees and others which are not appropriate have been set forth in a set of

guidelines I have proposed to be added to those which already have been adopted by the Commission. Those guidelines do cover such matters as staff review of draft responses to enforcement related documents but they cannot be reasonably construed to cover telephonic admonitions to provide the NRC with the fullest and most complete information available -- the sum and substance of my conversations with Mr. White.

As discussed in part earlier, Mr. Hayes must view my demand to be informed about safety information in his possession and to have investigations with significant safety implications pursued on a priority basis as "attempts to control OI's investigations". The Investigation Referral Board (IRB) was established not to control OI but as a management tool to assure that matters referred to OI for investigation met the dual threshold test established by the Commission of (1) a reasonable basis to believe that wrongdoing occurred, i.e., the violation at issue appears more likely to have been intentional or to have resulted from careless disregard or reckless indifference than from error or oversight, and (2) there is a regulatory need for an investigation. The first threshold is important to differentiate what cases should be handled by the staff inspection process in contrast to the investigation process. The second threshold is important because in some cases there may be sufficient evidence available to make a regulatory decision without the need for an investigation.

In making its recommendations the IRB considers the various perspectives and views of senior managers in the offices of NRR, NMSS, EDO, IE, and OGC. OI was invited to participate in the IRB deliberations because they would offer insight on wrongdoing issues and perspectives on what matters need to be investigated. However, while they were given notice of meetings, OI chose not to participate in IRB activities. Nevertheless, OI is given a copy of each case that the IRB considers as well as a copy of the decision of the IRB. This preserves OI's option to self-initiate an investigation if it believes one is appropriate.

It should be noted that the IRB serves in a advisory role. In an emergency, regional administrator can initiate an investigation without first consulting the IRB. In addition, if not satisfied with the views of the IRB, a regional administrator may refer a case to OI anyway, after discussions with the Executive Director for Operations.

Another important function of the IRB was to establish a national priority of cases for OI investigation based on regulatory significance and need. The Commission has established guidance for establishing priorities for investigations. However, with five regional offices, many different types of licensees with differing potential hazards, and guidance which by necessity is broad, it is difficult to establish uniform priorities. Recognizing that, regions may have issues of varying importance (for example, a high priority in region X may be a normal priority in region Y), it was important to establish a national priority listing to assure that the agency's investigatory resources were being focused on the most important safety issues. The IRB with the assistance of senior managers from the regions established a national listing which is expected to be updated periodically.

In response to the concern about the change in the referral rate since the IRB, a tabulation of regional requests for investigations by month was developed. A formal OI referral process was instituted by the EDO in the summer of 1985 requiring written requests. Consequently, there is a paucity of records prior to this time period. Based on our statistics the regions showed the following number of cases referred to OI for the 14½ month period prior to the IRB:

I	II	III	IV	V	
14	31	10	15	17	TOTAL (87)

Prior to the IRB, during the 9/85 to 11/10/86 timeframe nationwide there were 87 regional referrals; this number is equivalent to 72 referrals on an

annualized basis. A breakdown of the historical numbers shows that the TVA cases have had an impact in that Region II has essentially twice as many referrals as any other region. Of the 31 cases in Region II, 22 dealt with TVA. Putting the TVA cases aside, it leaves an annual rate of 54 cases. Similarly, it is of interest to note that in the 5½ month period before the formation of the IRB, both Regions I and III had only two referrals each. After formation of the IRB, Region I had two cases referred to OI and Region III had five cases referred to OI.

For the five month period of the IRB examined herein (11/10/86 to 4/9/87, the regions have submitted a total of 25 requests, two of which were sent directly to OI in accordance with emergency referral provisions. The cases identified by the regions during the five month interval are :

I	II	III	IV	V	
2	5	5	10	3	TOTAL (25)

However, there is a unique situation in Region IV that warrants special consideration. In response to OI, the region classified one request as eight individual referrals since eight different dockets were involved. One could view as the Region IV originally did, that this should be counted as one request. This affects the statistical comparison since the volume during the 5-month period could be viewed as 17 requests. The 25 cases identified by the regions are equivalent to 50 on an annual basis; adjusting for the above noted anomaly equates to about 40 cases annually, as compared to the previous year's annual rate of 54 cases when TVA is excluded.

However, the rate at which regions identify possible cases is not indicative of what is formally transferred to OI. Although OI has been provided copies of all submittals to the IRB, not all cases receive IRB approval; notwithstanding, experience has shown that the regions have accepted the IRB recommendations in all cases. Consequently, 13 cases have been referred to

OI; two of which have been emergency referrals. This volume is equivalent to about 30 referrals on an annualized basis. This reflects a decrease of about one-half from what has been experienced historically. However, the cases reviewed by the IRB have undergone a more thorough screening for completeness and prioritization such that they should not be rejected or denied by OI, as has been done on occasion before the inception of the IRB. As an example, four of the six requests made by Region II in May 1986 were denied by OI. From 9/85 to the establishment of the IRB 55 of the 87 cases referred to OI were treated as inquiries to determine whether a formal investigation should be made. Thus, less than a third (22) were treated as formal investigations.

Based on five months of IRB data it is difficult to draw statistical conclusions that there is a dramatic decline in regional referrals. For example, Region I had referred only two requests to OI in the five months interval prior to the inception of the IRB. In the five month period since the IRB was established, Region I has had two requests forwarded to OI through the IRB. However, the IRB in reviewing cases against the Commission's thresholds have reduced the number of cases referred to OI by about 50%. Cases were rejected for referral because there was not a belief that wrongdoing occurred, investigations were not necessary to permit appropriate regulatory action, or because OI was actively pursuing the matter such that a referral was not necessary.

In sum the IRB has not had a chilling effect on the number of cases identified by the regions. Cases are not hidden. Rather, the cases are being considered in a professional manner. OI is made aware of each action and invited to participate. The IRB is still in its six month trial period and appears to be serving the management function it was intended to serve. However, the staff is in the process of determining whether the IRB should continue past the trial period.

Mr. Hayes' adoption of Commissioner Asselstine's comment that the IRB appears to be a "...thinly veiled attempt by the EDO to control OI by controlling what

referrals are made and thus what OI investigates" is yet another example where there is failure (1) to understand the real purpose of OI investigations and (2) to appreciate the management problems within the agency. Mr. Hayes reluctance to participate in the IRB process is another lost opportunity that could have fostered better communications with the staff, thereby improving relationships. Perhaps more importantly, the real purpose of the IRB -- to function as a management tool to assist both OI and the staff -- could have been more effective. It is indeed disturbing that Mr. Hayes does not see the need for investigations as derived from staff needs. In fact it is the staff who identifies the need for investigations. If there is not a regulatory need (safety), should an investigation be conducted? This should be a rhetorical question; unfortunately it is not. Answering this question and assigning priorities is a legitimate management activity, the fundamental reason for the IRB. I indicated during the hearing (Tr. 169, 184-5) my surprise that any manager could harbor the ill feelings Mr. Hayes did for apparently as long as he has. A manager should recognize the conflict and arrange a meeting to discuss and resolve the issue. If it could not be resolved it should have been escalated. I also noted during the hearing two meetings I arranged with Mr. Hayes' senior staff to discuss issues. I invite Mr. Hayes to our periodic meetings to interact with my senior staff. It is difficult to resolve differences and manage conflict without cooperation. In all candor, I cannot recall a single instance during my tenure as EDO (15 months) when Mr. Hayes has made an effort to resolve these conflicts. I find this to be a disappointing management attitude, which must be overcome to resolve the conflicts. The purpose in providing the foregoing information is to clarify the difficult nature of the management problem. However, it does not change my resolve to continue in whatever way I can to improve working relationships to an acceptable level. I intend to continue my monthly meetings with Mr. Hayes and expect Mr. Hayes will participate in our next senior staff meeting in June. Furthermore, I will look for additional opportunities to foster enhanced communication and an improved working relationship.

Mr. Hayes cites the Milford Hospital case as an example of where a licensee was "tipped off" about an investigation because the technical staff tried to investigate rather than requesting that professional investigators, such as OI, conduct the investigation. The investigation for the Milford Hospital case is still pending, so I cannot discuss the details. In response to the "tipping off" claim, however, it is sufficient to note that during the course of a routine technical inspection at Milford Hospital, an NRC inspector, in the presence of the licensee's radiation safety officer, identified obvious, uncontested wrongdoing which was admitted by the licensee and the involved individuals and which, therefore, could not, by definition involve "tipping". OI was not requested to conduct an investigation because the charge was already substantiated by the licensee's admission to NRC technical personnel.

Concerning Mr. Mulley's testimony on pressure on OIA concerning the ongoing safety issues surrounding Comanche Peak, on November 26, 1986, OIA issued its Report of Investigation 86-10 addressing allegations of Region IV management wrongdoing relative to inspection activities at Comanche Peak. I will summarize my activities with regard to issues related to that OIA Report.

About March 19, 1986 I was informed that OIA had commenced an investigation addressing allegations of Region IV management wrongdoing relative to Comanche Peak inspection activities. Based on that, the Director OIA and I reached agreement that Region IV would cease further staff action to resolve the inspection issues in contention. In addition, I made arrangements that subsequent inspection findings of Mr. Phillips, the involved Resident Inspector, would be reviewed by Headquarters staff and management rather than the involved Region IV managers.

For about 4 or 5 months OIA continued their investigative work. I became increasingly aware of the negative impact it was having on the morale and effectiveness of both staff and management in Region IV. I became increasingly concerned that the investigation was detracting Region IV personnel from performing their basic job of protecting public health and safety. Some of

the managers for Comanche Peak activities also have responsibilities covering the seven operating nuclear stations in their Region.

In the early summer of 1986, I met with Mrs. Connelly and Mr. Mulley. I expressed my concerns to get the investigation completed. I offered staff assistance to OIA and asked if there were anything else I could do to help them conclude their work. At that time, I was informed the report might be finished in August. In fact, the report was not finished until November.

Mr. Mulley chose in his testimony to characterize my actions as pressure. Frankly, I think I was only doing my job as the responsible staff manager considering the negative morale impacts the OIA work was having in the Region. Further, in a personal sense, I kept a humane balance. Upon hearing in late July from Mr. Mulley that a member of his family was undergoing surgery, I strongly suggested that Mr. Mulley consider his priorities and take whatever time he needed.

It was also suggested by two witnesses that the OIA Report of Investigation 86-10 was indiscriminately distributed throughout the agency. In reference to a December 4, 1986 Commission directive to take action as a result of the Report, the Report was initially distributed to only a limited number of senior staff management officials and selected staff members who were charged with the task of reviewing the Report and its very voluminous attachments in a short timeframe for the purpose of assessing:

(1) whether the Report identified any issues that were of such a nature in terms of safety that immediate action was called for;

(2) whether the Report identified any grounds for immediately initiating any personnel actions;

(3) whether the Report could be released to the public in its entirety or whether deletions were necessary in order to prevent unwarranted

invasions of personal privacy, to preserve the NRC's ability to effectively inspect or investigate any matters identified or refer matters to the Department of Justice for action, or otherwise to preserve the ability of the NRC to act on the Report's findings (i.e., were predecisional); and,

(4) what bearing the Report might have in the ongoing licensing proceeding related to the application for operating licenses for Comanche Peak.

Very shortly after the initial limited distribution, I requested and obtained the Commission's approval to provide copies of the Report and its attachments to six named Region IV staff members who were central to the OIA investigation. I did this for two reasons: first, out of concerns of fairness, to permit these persons to have accurate information concerning the Report prior to its release so that they could knowledgeably deal with the anticipated public inquiries that would most likely follow any public release of the document; and, second, so that management could discuss the Report with them in addressing the issues stated above.

On December 11, 1986, the Commission approved the public release of a redacted version of the Report, with the names of all individuals and certain other information potentially relevant to the conduct of an investigation deleted.

I considered the allegations to be very serious and, with the approval of the Commission, I established the Comanche Peak Report Review Group (CPRRG) and charged it with conducting a comprehensive review of the issues raised in the Report and making recommendations to address the issues. I gave the Chairman of the CPRRG special authority to draw upon whatever staff or consulting resources were necessary or appropriate to comprehensively address the issues. Extensive efforts by senior management and other staff personnel resulted in the CPRRG Report dated March 12, 1987. On April 14, 1987, I transmitted to the Commission my recommendations and proposed actions, and on April 16th, I

briefed the Commission and requested its approval to implement the recommended actions. I also urged prompt release to the public of the OIA Report, the CPRRG Report and my April 14th recommendations. Because this matter is still pending with the Commission, I cannot discuss the details further. I can assure you, however, that the issues raised by the OIA Report have received the closest scrutiny and will be the subject of appropriate action as approved by the Commission.

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

AUG 07 1981

MEMORANDUM FOR: James J. Cummings, Director
Office of Inspector and Auditor

FROM: Victor Stello, Jr., Director
Office of Inspection and Enforcement

SUBJECT: OIA MEMORANDUM OF JUNE 25, 1981 REGARDING IE INVESTIGATION OF STEPAN CHEMICAL COMPANY

It is necessary to respond to the subject memorandum both to set the record straight and to note an increasingly serious problem that attends our relationship with both OIA and the Department of Justice (DOJ). First, I will deal with the Stepan investigation, itself.

I infer from the subject memorandum that DOJ has two express criticisms of the way in which the investigation was conducted: 1) the matter should have been handled as a criminal investigation from the outset based on the content of the Stepan attorneys' internal memorandum; and 2) the principals should not have been reinterviewed by IE (I assume based on the fact that one of them was evasive if not outright dishonest during the first interview). I sense that there is a third implied criticism of our decision to inform the attorneys who authored the internal memorandum that we possessed it, and of our decision to allow their presence during the reinterviews of Stepan employees.

With regard to the first point, I fail to see how one can argue that the matter should have been handled as a criminal investigation based solely on the contents of that memorandum. (That would of course, require immediate referral to DOJ as NRC lacks the authority to do purely criminal investigations.) Indeed, it should be noted that OGC reviewed the memo and then referred it to IE for appropriate investigation as a matter falling within this Office's responsibilities. I might add that OIA was provided a copy at that time, and the matter was discussed with Roger Fortuna, Assistant Director for Investigations, on several occasions.

It was, and is, my belief that you were well aware of the contents of the memo and the course of action that IE decided to take. I recall that no one in OIA suggested that the case was at that stage, a purely criminal matter or that NRC should exercise any of the "special handling" called for in the MOU. In short, at the time that we initiated this investigation, the internal memo had been discussed with OIA, OELD, and various management officials within IE, both at IE:HQ and Region I, and obviously had been reviewed by OGC. No one, including me, felt that it was appropriate to pursue this as a criminal investigation until such time as the health and safety/regulatory issues had been investigated. (This is the thrust of the OGC memorandum requesting the IE investigation.)

The investigation itself was conducted by a seasoned investigator with 17 years criminal investigative experience. He was assisted by a regional inspector and a second headquarters investigator with over 11 years criminal investigative experience. I mention this criminal investigative experience not to suggest that we were viewing this as a criminal investigation, but rather to establish that the investigators were well aware of what elements would constitute criminality, and more importantly were aware of what not to do insofar as it might impact on future prosecutive action. At the same time, they were aware that gathering the information required for NRC's needs, as set forth in the OGC memorandum, would be the primary consideration. Additionally the investigators remained in daily contact with headquarters throughout the investigation. The decision to reinterview the principals, to let the attorneys know that we had the memorandum, and to allow them to be present during the reinterviews was made with the full concurrence of the headquarters staff, and was based on the premise that the purpose of the investigation was to obtain truthful and complete information regarding this matter. It is our consensus that this is how we would conduct the investigation if it were initiated today.

We were aware that at least one of the persons interviewed had possibly committed a violation of 18 USC 1001 after he, in effect, lied to us during his first interview. This is not uncommon during investigations; it is a common investigative practice in such cases to reinterview the person to allow him to correct his previous misrepresentation. Such reinterviews are valuable, bearing in mind that the purpose of any investigation is to obtain the facts, not to maneuver people into positions wherein they can be prosecuted for crimes that they may not have committed had they been aware of the weight of the information possessed by the investigators. It would appear that the Newark U.S. Attorney's Office has a view concerning the conduct of investigations that focuses on the issue of a 1001 violation rather than the issue of paramount interest to NRC: health and safety. I cannot believe that the position attributed to that office in the subject memorandum reflects the official view of the Department of Justice.

With regard to the issue of our dealing with the attorneys, when my staff met with them, along with the attorney from OELD, it was evident that they wished to set the record straight. They appeared sincere in wanting to cooperate. They agreed to instruct any Stepan employees that we wished to interview to be fully candid with us. They requested the right to be present during these interviews. It was our collective judgment that it was in NRC's best interest to have them present as it would most likely facilitate the interviews. Both investigators involved have had considerable experience interviewing persons in the presence of their attorneys, and were confident of their ability to detect any attempts to interfere with the candid responses of the interviewee(s). It was their intention to terminate the interview in the event that the attorneys' presence became a hindrance. That was a professional judgment arrived at for tactical reasons. I submit that it was proper, and I have no reason to believe, given the facts of this case, that it inhibited the flow of information we sought.

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At the same time, it was evident to my staff during the meeting that the attorneys suspected that we had the internal memo. As they had written the memo, it seemed specious to play games and not acknowledge that we had it. They certainly knew its contents, and presumably would plan any defensive strategy around the conservative assumption that we did possess it. Thus, in keeping with our strategy of attempting to keep the attorneys as cooperative as possible, and recognizing the psychological disadvantage that they were under, in view of the pejorative information they had written about some Stepan employees, it seemed logical to acknowledge that we had it. Again, this was a decision made by those closest to the case who were in full possession of the facts.

This last statement leads me to the logical question as to who would have been best prepared to discuss this matter in detail with DOJ. It certainly appears reasonable that it would have been the IE investigators who did the investigation. As a minimum they would have been in a position to describe or defend investigative decisions that they made. Unfortunately, as has become the norm, they were not given the opportunity to do so. Although they accompanied Roger Fortuna on his visit to the U. S. Attorney's Office at the outset of the investigation (the first of three or four contacts with DOJ by Mr. Fortuna during the IE investigation), they were asked to sit in an anteroom while the OIA representatives briefed the case. IE was not invited to participate in the subsequent meeting described in the subject memo.

I alluded earlier to what I view as the increasingly serious problem of the IE relationship with OIA and DOJ. Except for the liaison that we have with the FBI, all IE contacts with DOJ are via OIA. Thus, if there is a problem with DOJ, it apparently is a product of our relationship with OIA.

No matter how one interprets the authorities and responsibilities of the two Offices as set forth in 10 CFR et al, I cannot see the logic of excluding IE from discussions with DOJ regarding investigations IE conducts. I see neither the need nor the logic behind dealing through a "cut out," and I submit that this practice, while gaining nothing, creates problems like this one. I can only speculate that had IE been present during the contacts with the U.S. Attorney's Office, many of the concerns described in the subject memorandum could have been resolved on the spot. Given the foregoing, I suggest that the Commission should be asked to consider (if this matter need even involve them) whether IE should have the option of referral of its own cases in consultation with OGC or OELD as appropriate. As a minimum, there should be a requirement for OIA to involve IE actively in referrals and discussions of its own cases so that DOJ will understand the complete NRC position on any given case.

In closing, I must point out one other thing that bothers me regarding what I had previously felt was a steadily improving relationship between OIA and IE. The subject memo is apparently an internal OIA memo to the file; yet for some reason, a decision was made to forward it, sans cover letter or analysis, throughout the NRC. The effect was to distribute a memorandum throughout the NRC that criticized explicitly and implicitly the IE investigators who, in my view, did an excellent job with a very sensitive investigation, without first giving IE an opportunity to comment on it. If it were serious enough to justify that sort of distribution, it certainly seems that a discussion at the Office Director level was warranted, if for no other reason than professional courtesy.

In summation, I hope that I have provided enough information to explicate our side of this matter. If not, I would be pleased to discuss this with you at your convenience.

Victor Stello, Jr., Director
Office of Inspection and Enforcement

cc: H. K. Shapar, ELD
J. A. Fitzgerald, OGC
B. H. Grier, RI
D. T. Thompson, IE

ITEM D

South Texas

Allegation

Improperly used subpoena to obtain safety information regarding South Texas project from Government Accountability Project (GAP).

Response

A brief summary of events follows with a more complete chronology of events attached.

In early 1987, GAP informed the NRC that they had numerous safety allegations regarding the South Texas nuclear plant. GAP offered to provide these allegations under certain restrictive conditions to be imposed on the agency. I found these restrictions to be unacceptable since they could have interfered with the ability of the agency to conduct a thorough investigation of the issues. After several months of legal debate and various administrative and court rulings, GAP provided the information sought in the subpoena and this information was investigated by the NRC.

Summary of Events - South Texas

During the first four months of 1987, Billie P. Garde, Esq., an attorney for the Government Accountability Project, exchanged correspondence with Victor Stello, Jr., NRC Executive Director for Operations (EDO), regarding numerous safety allegations that she claimed to have reached concerning the South Texas nuclear plant. Ms. Garde expressed a willingness to provide the allegations to the NRC, but only on the condition that they be investigated by an NRC employee or task force independent of NRC Region IV. Later, in a May 29, 1987 administrative pleading, Mr. Garde requested that the individual or task force be independent of Region IV and the EDO. The EDO position on allegations management was that the South Texas Project is located in Region IV, and the personnel in that region could adequately investigate the allegations; and in any event, Ms. Garde should turn over the allegations to the agency so that the agency could determine the proper handling of them.

After repeated requests for the information, on May 20, 1987, the EDO issued a subpoena directing Ms. Garde to testify and produce documents concerning the South Texas safety allegations on May 26, 1987 at an NRC office in Bethesda, Maryland. On May 22, 1987, Ms. Garde and the NRC entered into an agreement to postpone the deposition. The agreement provided that Ms. Garde would move the Commission to quash the EDO's subpoena by Friday, May 29, 1987, and the NRC agreed to continue the appearance date for the subpoena from May 26, 1987 until fourteen days after the decision on the motion to quash, unless the parties agreed on an earlier date. By agreement with Counsel for the NRC staff, Ms. Garde filed her motion to quash the subpoena on Monday, June 1, 1987. She argued that compliance would compromise the public health and safety, that the EDO lacked authority to issue the subpoena, and that the information was protected by the attorney-client privilege and work product doctrine.

In a July 15, 1987 memorandum and order, the Commission denied the motion to quash and ordered Ms. Garde to appear pursuant to the subpoena and provide the information being sought. Pursuant to the Commission's order, Ms. Garde appeared for the deposition on July 27 and August 5, 1987, but refused to provide the information sought, claiming that it was protected by the attorney-client privilege and work product doctrine.

Thus, on August 14, 1987, the NRC, through the United States, filed an action to enforce the subpoena in the US District Court. In the suit, Ms. Garde and GAP again asserted the attorney-client and work product doctrine arguments. Also, for the first time they argued that enforcement of the subpoena would abridge the First Amendment rights of association of GAP and the allegers.[1]

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[1] The United States took the position that no attorney-client privilege or attorney work product protection was available for the subpoenaed information. Of particular importance was the promise of confidentiality which was made by Mr. Stello consistent with the NRC's policy on confidentiality for such information, to

On October 27, 1987, in a memorandum opinion, the Court declined to enforce the subpoena, holding that it had not been narrowly drawn to avoid unnecessary infringement of associational rights. The Court explained that enforcement of the subpoena would create a fear of harm on the part of the individuals who had confided in Ms. Garde and GAP, and that such fear would chill the willingness of these individuals and others to associate with GAP in the future. The Court also noted that the United States had not shown that alternative means of serving the compelling interest in nuclear safety had been exhausted. The Court warned however, that Ms. Garde and GAP should not consider the outcome of the case as granting them immunity from NRC subpoenas or endorsing their attempt to dictate how the NRC conducts its affairs. On the after point, the Court noted that the agency understandably resisted Ms. Garde's demand to set the terms and conditions of disclosure, especially on the issue of whether Mr. Stello would be shut off

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all individuals who had communicated with Ms. Garde. With respect to the claim of attorney-client privilege, the United States notes that the primary objective of the subpoena was not to obtain the substance of the communications between Ms. Garde and her client, but rather to obtain the names of the individuals who had contacted Ms. Garde. This would permit the NRC investigators to speak directly with the individuals who had direct personal knowledge of the alleged safety problems. As for the work product claim, the United States argued that the doctrine did not protect the identities of persons with knowledge of the relevant facts, and the subpoena did not encompass the strategies or thought processes of Ms. Garde.

Finally, as to the First Amendment claim, the United States argued that the NRC's commitment to maintain the confidentiality of the allegers effectively prevented any harm to them and their rights of association were therefore not at risk.

from the information and the investigation of it.

After the Court's decision, in an effort to resolve the matter, on November 18, 1987, Ms. Garde met with a number of NRC officials at NRC headquarters in Washington. She provided written summaries of the allegations which had been communicated to her regarding South Texas, but the information she provided was inadequate to permit further investigation. Upon being advised of this, Ms. Garde offered to permit a review of GAP files pertaining to the South Texas plant.

The initial review commenced on November 25, 1987 and was completed on December 16, 1987. NRC staff representatives were permitted to examine all of the GAP files except for those which related to NRC employees who had contacted GAP and a few which were withheld at the request of certain allegers. Names of the allegers were included in the information provided by Ms. Garde. The NRC staff agreed not to make a record of them, however, and to hold them in confidence pursuant to a promise of confidentiality previously extended.

After the file review was completed, the NRC staff conducted interviews with a number of the allegers. Most were interviewed over the telephone (two were interviewed face-to-face) on an anonymous basis.[2] At this point, Ms. Garde and GAP had provided the information sought by the subpoena.[3]

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[2] After acquiring the information, a team of NRC experts referred to as the Safety Significance Assessment Team (SSAT) conducted an inspection of the South Texas plant the week of January 18-22, 1988. In March, 1988, the SSAT issued an extensive report of their findings (NUREG-1306).

[3] On December 24, 1987, the United States filed an appeal of the District Court's decision, denying enforcement of the subpoena. After satisfaction of the subpoena however, the United States moved to dismiss the appeal as moot and to vacate the district court judgment. On June 17, 1988, the court of appeals dismissed the appeal as moot but declined to vacate the district court decision.

ITEM E

Zimmer Allegations

Allegation

Failure to deal appropriately with widespread noncompliance with NRC regulations at the Zimmer plant...

Response

There were a number of issues raised about the Zimmer project. I responded to these issues in an August 31, 1983 memorandum to Chairman Palladino, a copy of which is attached. One of the central questions relates to pursuing noncompliance issues derived from review of quality assurance records (paper) versus an inspection process that determines the adequacy of the actual plant hardware. The position I stated with respect to this issue was:

> I had a concern as to whether or not we had a full understanding of what the problem was and what has come to be discussed as to whether we really had a hardware problem or a paper problem and what is the real problem at Zimmer, a question I don't feel like I could even truly get answered today, but that was the thrust of the concern...

This issue was concluded by the Commission in an October 27, 1983, Chairman Palladino memorandum to me (copy attached) stating:

> The purpose of this memorandum is two-fold. The first is to state that the Commission is of the view that, with regard to the matters covered by the report, you acted in good faith, based on your understanding of Commission policy as it existed at that time. The second purpose of this memorandum is to carry out the wish of the Commission that you received a clear expression of our

continued support and confidence.

It is noteworthy that in April/May 1984, NRC was directed by Congress to conduct a study of existing and alternative programs for improving quality assurance and quality control in the construction of nuclear power plants. This amendment to the NRC authorization Act was introduced by Senator Wendell Ford and co-sponsored by Senators Simpson, Mitchell, Levin and Hart. The study resulted in a report known as NUREG-1055. One of the conclusions of this report related to the inspection of hardware and stated:

> 2.1.2 Why have the NRC and the Utilities Failed or Been Slow to Detect and/or Respond to These Quality-Related Problems?
>
> ...The inspection program was oriented to focus heavily on paperwork at the expense of examining either actual work in progress or QA program implementation. The inspection program focused on detail rather than on whether the overall management process for the project was working....The NRC and industry need to focus more on the implementation of quality assurance programs including the quality of completed hardware, and less on the details of the programs (e.g., program descriptions, organization chart, independent of reporting chain, etc.)...review of the licensee's written QA program documentation was being emphasized at the expense of observing work and inspecting hardware....

AUG 31 1983

MEMORANDUM FOR: Chairman Palladino

FROM: Victor Stello, Jr., Deputy Executive Director
Regional Operations and Generic Requirements

SUBJECT: REPORT TO THE CHAIRMAN ON ALLEGATIONS OF THOMAS APPLEGATE CONCERNING CONDUCT OF THE OFFICE OF INSPECTOR AND AUDITOR

This is in response to your memorandum on this subject of August 4, 1983, forwarding the subject report for comment. I appreciate the opportunity to comment on the report because it levels specific criticisms at me.

The report is seriously flawed in that it (a) contains findings and conclusions on matters not mentioned in the body of the report (and far beyond the scope of the investigation as set forth in your memorandum of May 6, 1983 to the investigators), (b) incorrectly assumes that directions I gave which kept IE out of the criminal investigation business were contrary to common sense or Commission policy, or both, and (c) exhibits lack of understanding of the inspection process as it relates to "paper" and "hardware." My detailed comments supporting these conclusions are set out in the attached "Detailed Comments."

Original signed by
Victor Stello

Victor Stello, Jr.
Deputy Executive Director
Regional Operations and
Generic Requirements

Attachment
Detailed Comments w/encls.
1. Comments on Recommendations 1 through 5
2. Excerpts from Transcripts of
   Meeting of October 27, 1981 (Closed)
   and October 28, 1981 (Closed)
3. SECY 81-588

cc: Commissioner Gilinsky
Commissioner Roberts
Commissioner Asselstine
Commissioner Bernthal
William J. Dircks, EDO

Detailed Comments of Victor Stello, Jr. on Report to the Chairman on Allegations of Thomas Applegate Concerning Conduct of the Office of Inspector and Auditor

Introduction

The subject report deals with allegations by Mr. Applegate concerning an investigation by OIA of earlier allegations by Mr. Applegate concerning an investigation by Region III, then a part of IE, of construction and quality assurance at the Zimmer Nuclear Power Station. The report contains a number of findings and recommendations. There are two statements in the report directly relating to me; one is in Finding 4, the other is in Recommendation 6.B. There is also a statement directly relating to me in the cover letter which transmits the report. My comments on those statements are set forth below. My comments on other recommendations of the report are set out in Enclosure 1 to these "Detailed Comments."

At the outset, I refute any implication that I encouraged or engaged in any policy regarding criminal investigation by IE which was in any way inconsistent with Commission policy applicable at that time, that I encouraged or engaged in any limitation of IE investigation effort into any issue affecting [illegible] health and safety, or that I view "paper problems" as a lesser form of regulatory violation.

The statements directly relating to me are:

(1) from the cover letter

> "...the unduly restrictive interpretation of 'health and safety' taken by Victor Stello, Deputy Executive Director for Regional Operations and Generic Requirements, and by senior Region III..."

(2) Finding 4

> "We find that Victor Stello, while Director of IE in 1981 and as Deputy Executive Director for Regional Operations today, has taken the official position and did so instruct Region III officials in 1981 that IE personnel are not to conduct criminal investigations. While facially correct, we further find that Region III officials apparently relied upon Mr. Stello's leadership on this aspect of enforcement to justify a failure to vigorously pursue all possible causes or types of regulatory violations. As a consequence of this hesitancy to address potentially criminal conduct, we find that Region III officials initially narrowed the scope and depth of their investigation into altered or incorrect QA/QC documents at Zimmer to the detriment of the NRC's enforcement program."

(3) Recommendation 6.B

> Victor Stello, by excluding criminal matters from the responsibility of IE and by focusing primarily on 'hardware' problems, has contributed to the artificially narrow concern exhibited by some Region III officials with respect to possible problems at Zimmer. While Mr. Stello has in the past pressed for a clarification of the investigative responsibilities of IE, his oft-articulated view of IE's mission has unintentionally permitted regional officials to exclude investigations into the causes of regulatory violations under the guise of 'not in my job description.' Moreover, he exhibited a disturbing willingness to view 'paper problems' as a lesser form of regulatory violations than other types of deficiencies."

The statement in the cover letter is a summary statement intended to characterize the finding and the recommendation. Therefore, my comments will be directed to the latter two statements.

After several careful readings of the report, I found no supporting discussion anywhere in the report regarding either the finding on the recommendation particularized to me. I, therefore, inquired of Judge Hoyt if indeed that was correct. Judge Hoyt agreed it was and informed me that the finding and the recommendation were derived from information provided during their interview of me. A short time later, she contacted me to inform me that the finding and the recommendation were also derived from information provided during interviews of Charles E. Norelius and James B. McCarten. I requested copies of the transcripts of these interviews, as well as the transcript of the James G. Keppler interivew. While Mr. McCarten's interview contains a great deal of discussion of his belief that NRC should conduct investigations so as to focus on ascertaining criminal conduct and Mr. McCarten's speculations concerning motives of others involved in the conduct of the Zimmer investigation, the only portion which relates directly to me deals with a meeting I attended in the Region III office in the spring of 1981[1]. This portion of Mr. McCarten's interview is discussed below. I found nothing in Mr. Norelius's interview directly related to me.

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[1] There are also a few additional second-hand statements in Mr. McCarten's interview indicating what other people thought I would do or say if a question were put to me.

Embodied in Finding 4 and Recommendation 6.B are two basic concepts "criminal investigations" and "paper versus hardware problems."

A. Criminal Investigations

Commission Policy

A major (unstated) premise for the conclusions contained in Finding 4 and Recommendation 6.B, quoted above, as well as several other conclusions in the report, is that IE and Region III ought to have conducted criminal investigations related to activities of Zimmer. This point is brought out in Recommendation 4 of the report.

> "...The identification and enforcement of regulatory violations including possible criminal violations is in everyone's job description. Accordingly, there should be a review of office charters, job descriptions and internal operations memoranda to determine whether senior Commission officials are, by narrow interpretations of their responsibilities, effectively jeopardizing the mission of the agency."

This unstated premise appears to be the view of the authors of the report about what the NRC policy should have been, but it does not in fact accurately represent what the NRC's policy really was regarding criminal investigations during the 1980-1981 timeframe. The report is, therefore, seriously flawed.

During that time frame, and for many years before, Commission policy, which was founded on Section 221b of the Atomic Energy Act[2] and the prudent utilization of available resources, was to focus on the health and safety implications of regulatory noncompliance and to refer all alleged or suspected criminal violations which might be associated with such noncompliance to the Department of Justice. Indeed, less than a year ago, in response to a request for legal research and opinion on the question of "whether the NRC has the authority to conduct criminal investigations," the Office of the General Counsel advised:

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[2] Section 221b reads in its entirety as follows: "The Federal Bureau of Investigation of the Department of Justice shall investigate all alleged

> "The Atomic Energy Act does not explicitly give the NRC such authority -- indeed the Act should probably be read as depriving NRC of such authority -- and we conclude a court would most likely conclude that the NRC does not have the authority to conduct an investigation solely for criminal purposes."[3]

Moreover, the fact that IE was not conducting an investigation to determine whether there were criminal issues involved in connection with the Zimmer case - that was the province of OIA and the Department of Justice - was specifically brought to the attention of the Commission, along with the reasons therefore, at meetings held October 27, and October 28, 1981. We discussed specifically, and were actively questioned by the Commissioners concerning, the Memorandum of Understanding with the Department of Justice and the work of OIA in the area of investigations into allegations of criminality in connection with Zimmer. Moreover, we asked for Commission guidance on working relationships between IE and OIA and between NRC and the Department of Justice. (pp 99 through 105 of the transcript of October 27 meeting and pp 14 through 23 of the October 28 meeting are enclosed as Enclosure 2.)

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[3] Memorandum of October 15, 1982 from M. Malsch to Fitzgerald, subject: "Request for Legal Research and Opinion."

These fundamental policy and legal issues, which were an essential part of the background of the allegations which were the subject of the report, were ignored.[4] If they had been carefully considered, the authors would have recognized that the position attributed to me personally in Finding 4 and Recommendation 6.B, of relying on DOJ and OIA rather than IE for criminal investigation work, in fact reflected Commission policy at that time and was in fact a matter of which the Commission was aware during that time frame. Those statements on Finding 4 directed toward me are completely untenable.

The Role of IE in Criminal Investigations

On the related point of how far NRC's investigation should go into attempting to uncover criminal conduct, the Finding 4 and Recommendation 6.B. are directly related to another erroneous assumption in Recommendation 4 that "[the] identification and enforcement of regulatory violations including possible criminal violations is in everyone's job description."

As I pointed out during my interview, any investigation is basically a fact gathering activity, independent of whether these facts are to be used for a civil or criminal proceeding. What then becomes the fundamental question is: when to conclude the investigation? Clearly, from

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[4] Or, at best treated rather casually. Finding 4 refers to my position regarding conduct of criminal investigations as "facially correct."

NRC's viewpoint it must continue until sufficient information is compiled to assure adequate protection of public health and safety in connection with any licensed activity[5] and to enable NRC to take the appropriate regulatory action. During the information gathering process for either investigations or inspections, occasionally a fact pattern emerges which suggests potential criminal violations. When a fact pattern is apparent which suggests criminal activity, the question is do we pursue it further? Clearly, if more data is needed to understand the health and safety issue, the answer is yes. NRC should pursue the matter until we have all the facts necessary to understand the health and safety implications of the issue. We should take our regulatory action on this basis. Any information suggesting criminal conduct should be turned over for further investigation to trained criminal investigators -- the FBI and DOJ. It may well be that further regulatory action would be appropriate upon completion of the criminal investigation activities.

There is, of course, an issue as to whether the Zimmer investigations were conducted with adequate investigative techniques and went far enough to provide necessary information to make health and safety judgments. But this issue is different from the question of whether IE must pursue all investigations to the extent of determining whether there is a criminal case.

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[5] For construction under a construction permit, in which the activity itself poses no direct radiological safety hazard, our investigation must provide sufficient information to ascertain the potential significance of the issue to the safety of the facility if an operating license were to be granted.

My position on the scope of IE's investigation effort, and its interrelationship with the work of OIA and DOJ, is reflected in the interview conducted by the authors of the Report, for example at p 43.

> "Mr. Stello: I don't remember ever preparing a memo asking that question, but everything that I had gotten back and explaining what we were doing, and I had a number of confrontations I guess with Mr. Cummings on this issue, where it was clear to the Commission that I was conducting the business of that office for the Commission with the understanding that I was not 'conducting criminal investigations.' They were health and safety investigations for the purpose of collecting that information.
>
> " They clearly collected facts that could be used for both purposes for sure, but when we satisified that we had collected sufficient information to deal with health and safety, we were finished, and to go beyond that just for the criminal issue was a call that was to be made by the Department of Justice.
>
> " I think Mr. Cummings disagrees with me and believes that that is his call as well and, hence, Gamble was 'doing a criminal investigation,' which if he understands that is in his charter, that is fine. It was not in my view in my charter, and I think, who was it, Commissioner Ahearne who was Chairman at that time, and I think that was understood because we had discussions on this issue."

Even Mr. McCarten's interview, despite reflecting his disagreement with IE management about conducting investigations to develop information about potential criminal conduct, demonstrates that he understood that he was to pursue allegations to develop all the facts necessary to understand the health and safety significance of the issue involved in the allegation; he argues his belief that IE should have gone further to establish underlying criminality - something Mr. McCarten indicates calls for much more investigation effort.

Mr. McCarten's one direct reference to me relates to a meeting at Glen Ellyn in the spring of 1981:

> (Mr. McCarten) "That brings us around to the main meeting with Mr. Stello in Region III in which Mr. Stello was given detailed brief as to what we found at the plant. The conclusion of the brief was Mr. Stello, these are only paper problems and that is it.
>
> Stello got very upset about that saying you mean you spent three months investigating a plant with 20 inspectors and invested a thousand man-hours and you are telling me you have only found paper problems? He was kind of upset with that type of thinking, and one of the inspectors, Jerry Shapker, stood up and he says has anybody in this room got any evidence that there are hardware problems? He said I have got inspectors that can walk into a plant and tell you if there are hardware problems. I would like to see the inspector, but the point is Shapker stood up in that meeting and said there are some hardware problems, the structural welding is faulty.
>
> I stood up and I says the nonconformance reporting system relates to hardware problems not being identified. Then I said there are also criminal violations there, and when I said that Stello got very emotionally upset, threw up his hands and said we have got inspectors tied up in grand juries right now. I don't want to hear about any criminal allegations. He says we are just going do health and safety. That is OIA's job and we don't want to have nothing to do with criminal stuff, and this is May. Then he walked out of the meeting." (p 100)

The quoted portion reflects two areas of frustration on my part: first, the inability to obtain what I felt was a thoughtful assessment of the safety significance of the results of an investigation into which substantial office resources had been poured; and second, the inability to have IE investigators recognize that criminal investigative work was being carried out by OIA at that time and that IE's resources needed to be focused on the health and safety issues. At the time of the spring 1981 meeting, OIA had already established an independent criminal investigation -- thus, despite Mr. McCarten's misunderstanding of the situation, the issue was not whether NRC would continue an investigation into criminal issues but rather the issue was that an office other than IE would do so.

A memorandum[6] was developed for IE and OIA to set Agency policy for such circumstances. This memorandum was developed with the (informal) concurrence of the Department of Justice. It established a process, whereby, IE would inform OIA of such circumstances for their evaluation and determination as to whether or not a referral should be made to the DOJ.[7]

The Director of OIA was and remains of the view that his office is responsible for conducting criminal investigations of NRC licensees.[8] Consistent with this view, OIA initiated a criminal investigation of Zimmer around March or April of 1981 (see page 6 of Hoyt Report). At this point, IE had an investigation and continuing inspections ongoing, the FBI had an interest and conducted an investigation, OIA was investigating Region III's prior investigation and had initiated a separate criminal investigation and finally the DOJ was reviewing the facts as they developed. A very confusing environment. To assure that the basic regulatory issue remained the focus of IE's attention, I made the management decision IE would concentrate its resources on health and safety investigations and inspections, and to accept the prior arrangement that the criminal investigation would be OIA's job.[9] It was agreed that we would cooperate fully with OIA in this regard and the record demonstrates compliance with that agreement.

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[6] IE/OIA Policy for Referral of Criminal Matters to the Department of Justice and the FBI, "Nov. 29, 1980."

[7] I did not agree with this policy and attempted through oral discussions with the Commission to change the policy, and formally raised the issue in a memorandum to the Commission. SECY 81-588.

[8] Whether this Commission or the previously constituted Commission agrees with this view is unclear.

The transcript of the October 27 and 28, 1981 Commission meeting reflects the fact that these decisions and these arrangements were discussed with the Commission. The transcript also reflects the confusing interrelationships. This problem concerning the interrelationships between IE, OIA and DOJ was clearly spelled out in SECY 81-588 and Commission guidance was requested.

Again, the report by attributing to me personally a limitation on IE investigation effort, is in error and fails to deal with the underlying difficult policy issues of the relationship among the various staff offices involved in inspection and investigation activities and the interrelationship with the Department of Justice in cases in which there may be potential criminal information. Rather than dealing analytically with the problems and analyzing a range of potential solutions - the Report simply proposes a statutory Inspector General as a panacea.

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[9] This is, of course, not to suggest that I believed OIA's action to be correct but rather a decision that had to be made to continue with fulfilling IE's responsibilities.

Criminal Prosecution as an Element of Regulatory Enforcement

Recommendation 4 and Recommendation 5 contain language suggesting greater emphasis on criminal prosecutions. If the intent of these recommendations is that NRC use criminal prosecutions as an additional element in the regulatory arsenal of enforcement, I fully concur. An individual inflicting intentional damage to a nuclear facility or a senior management official lying about an important safety issue comes to mind as examples in this regard. In such instances, however, I believe that development of the criminal case should be under the direction of the DOJ with the assistance of trained FBI agents for fact gathering. We, of course, should be available to provide technical assistance upon request. Our agency is a highly technical one.

If, on the other hand, these recommendations are intended to propel NRC into the field of criminal investigation, I disagree. Criminal investigation and prosecution are fields as highly specialized in their own way as is the field of nuclear safety. Criminal investigations must be carried out by persons well trained in the pursuit of criminal evidence and the development of all the elements of a criminal case and well trained to assure due regard for the rights of persons involved in criminal investigations. Criminal investigation is not and should not be "in everyone's job description." To dilute the NRC's resources by taking on this additional highly specialized area leaves fewer resources to review, inspect and evaluate safety issues -- the area for which NRC as an agency is uniquely qualified.

It is inconceivable that any health and safety issue could arise for which NRC does not have sufficient authority to correct the situation to assure public health and safety. We can deny a license, modify, revoke or suspend an existing one. These regulatory tools, coupled with criminal enforcement carried out by agencies specially trained in criminal investigation and prosecution, provide a formidable regulatory arsenal.

In summary, I find myself driven to the conclusion that NRC ought to stick to health and safety and leave the pursuit of criminal matters to the FBI and DOJ.

B. Paper versus Hardware Problems

It is particularly difficult to deal with this issue, simply because there are only fragments of the "hardware versus paper" issue in the report. In fact, the concept is only mentioned in paragraph 6B on page 32 of the report. And not discussed anywhere else. Yet without any indication of basis the last sentence of Recommendation 6.B. states:

> "Moreover, he exhibited a disturbing willingness to view 'paper problems' as a lesser form of regulatory violations than other types of deficiencies."

This assertion is refuted by the 95 elevated enforcement actions taken during my tenure as Director of IE. A review of these actions would dictate a contrary conclusion. Had the report authors made the effort, they would have found their accusation was completely untenable.

Moreover, the interview of me conducted by the report authors also demonstrates that I do not consider "paper problems" as a lesser form of regulatory violation. The following excerpt demonstrates the relationship between hardware and paper problems:

> "Judge Hoyt: The serious problems that you thought had to be dealt with, were they in categories: Did you feel like your main problems were hardware problems, did you feel like you had a paper problem, that these papers were not generated as you described to us here, or did you feel that the hardware in that plant was the problem?
>
> "Mr. Stello: Given that there is a paper problem, you can't make the final judgment on the hardware. You have got to do that independently by some mechanism.

> " So that when you have a paper problem you have to say you have serious question about the equipment. So you can't really separate them, because what you can't do then is say this piece of equipment is indeed okay because you don't have a document that shows it indeed is okay.
>
> " But clearly the preponderance of questions were raised to try to capture the total of it, inadequate paper. That is what was the basis for raising the concern. But for everywhere where there was inadequate paper, the concern by definition is also a concern for equipment and you have to then resolve it.
>
> " There was most recently this past several months a team of people who went out to do exactly this, to try to independently arrive at by our own inspections and measurements to gain some understanding, and clearly there was some equipment for which there were problems a lot of which have been recognized over the years which are not yet resolved.
>
> " So there clearly are equipment problems, but the seriousness of it I think, if you forced me to answer the question this way, at that point in time how would I characterize what we had, real known, identifiable major problems with equipment or real known, identifiable major problems with equipment or real known, identifiable paper problems, I would have picked the latter and said we have to deal with this to try to find out whether we have a problem. That becomes a question, I don't know that it there, but I do know I had the paper problem." (p 20)

Also a further explanation of the concern for understanding the nature of the problem was offered:

> (Mr. Stello) "I had a concern as to whether or not we had a full understanding of what that problem was and what has come to be discussed as to whether we really had 'a hardware problem or a paper problem' and what is the real problem at Zimmer, a question I don't feel like I could even truly get answered today, but that was the thrust of the concern was to try to get a real understanding and assessment of what the nature of the problem. Did we have a hardware problem? Was the equipment there bad and, if so, why and what equipment and what needed to be done about it.
>
> " We clearly knew at that time that there was an awful lot of paper that had been generated associated with a lot of equipment for which we had significant problems, paper that was

> generated and paper that should have been generated that wasn't generated, both. (p 13)

In summary, the conclusion reached by the authors of the report is incorrect. I do not view "paper problems" as a lesser form of regulatory violations. Furthermore, the record does not suggest nor support such a view. I was not then and would not now, however, propose to stop our investigatory process until we were satisfied that the equipment in a facility is acceptable and the people are capable of constructing and operating it safely.

Paper or more precisely QA/QC records are important, but reasonable assurance of public health and safety is derived in the final analysis from adequate performance of people and equipment. We are finally making progress in this regard. The quality confirmation program initiated almost two years ago is identifying inadequate equipment and causing necessary corrective action. Management deficiencies were ordered corrected in November 1982 and proposals to correct these people-related activities are expected in the next several weeks.

Conclusion

With respect to its references to me in Finding 4, Recommendation 6.B, and in the letter of transmittal, the report is in error. This is unfortunate since the error could have been easily avoided had the report authors indicated to me their interest in the policy elements which formed the background to IE's Zimmer investigations. Unfortunately, they did not, at any time, indicate to me that this was the direction of their inquiry. Had they done so, I would have been able to provide additional information, such as the documents referenced in these Detailed Comments, which could have assisted them to correctly understand the underlying policy issues.

Enclosure 1

Comments on Recommendations 1 through 5

1.* The recommendation for a statutory Inspector General is made without supporting analysis of the pros and cons of various alternatives for resolving the questions NRC faces in connection with the interface between inspections and investigations focused on health and safety issues and investigations into potential criminal activity.

Congressman Markey has been holding hearings on a proposal identical to this recommendation and four of the present Commissioners have testified before Congressman Markey's subcommittee. None favored an independent statutory inspector general.

2. This recommendation suggests a central toll-free telephone line and tracking system for receiving and recording allegations be implemented. A tracking system for allegations has already been instituted although a specific toll-free telephone system is now not available. This suggestion has merit and should be considered.

The most difficult issue, however, relates to who in the Agency should receive such calls, and the need for around-the-clock coverage. The capability needs to be adequate to assure that the NRC can obtain sufficient information from an alleger to assess the safety significance of the allegation. Perhaps an on-call duty officer system within IE, NRR and the Regional Offices could be devised for this purpose.

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*Numbered recommendations contained in the report.

3. We had a program for indoctrinating all new employees in the OIE to assure that they were made aware of investigative responsibilities. We presently have a training program in Chattanooga, Tennessee, for periodic training of inspectors. It would be a relatively simple matter to expand the course content as necessary to include investigative-type thinking into the technical courses for inspectors. A far more difficult task, however, would be to devise a course to provide sufficient technical training for nontechnical people characteristic of the investigators now being hired. To do a reasonably comprehensive job in this regard would require a considerable resource commitment, therefore, before any further policy is formulated in this regard a thorough study of this issue appears to be needed.

The last sentence of this recommendation deserves special comment.

> "Since construction or operational deficiencies do violence to both the safety of a plant and the integrity of the NRC's regulatory program, inspectors and investigators should be cross-trained in both the technical and investigative fields to ensure that they can and will address both aspects."

Construction or operational deficiencies do not do violence to the integrity of the regulatory program unless we ignore them. If what is intended in this comment is to assure that the health and safety implications of deficiencies are dealt with, I concur. If the intent of this comment was to further suggest that investigators need to be reminded that health and safety matters must be first and foremost the fundamental purpose of their investigation, I concur. If, on the other hand, it is suggested by the comment that inspectors ought to be devoting their time to developing a "criminal case," I would urge the Commission to reject this notion.

4. This recommendation was discussed in my Detailed Comments.

5. Recommendation 5 urges the integration and coordination of inspections and investigations. This recommendation is similar to recommendations I have previously made, SECY 81-588.

There are at present four major components of the agency directly involved in the investigation process: OI, OIA, IE and NMSS. In addition, results of investigations at various times during the investigative process need to be coordinated both with the FBI and DOJ and at various times with state and local law enforcement agencies. Experience has shown that a confused environment can result.

Furthermore, with four separate offices involved, there is a an inherent fragmentation of agency-wide focus for NRC's inspection/investigation activities.

The principal function of the inspection process is to monitor compliance with NRC requirements with its focus on the health and safety implictions of violations. Most violations are found as a result of information initially uncovered in inspections. The indepth investigation into particular issues was an important part of the overall assessment of the adequacy of licensee compliance with NRC requirements.

Transfer of the investigation function from IE to a Commission level office was intended to emphasize the investigative function and to bring about a fundamental implement in the NRC's investigative work product. I agree with these objectives and I agree that the change made by the Commission is accomplishing an improvement in the investigative process. But the focus of the investigative process has shifted to an emphasis on "wrong doing" and has isolated the investigation activity from the operational elements of the agency.

Isolation of the investigative activity and focusing its attention on "wrong doing" rather than operational safety implications of activities under investigation, will, in the long run, detract from plant safety. I recommend that:

(1) OI be returned as an integral part of IE.

(2) Coordination with DOJ be directly with IE. See SECY-81-588.

(3) The Commission develop a formal policy statement, consistent with legal requirements and prudent use of agency resources that will cause NRC to focus on health and safety implications of regulatory noncompliance and refer all alleged or suspected criminal violations to DOJ.

CHAIRMAN

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

October 27, 1983

MEMORANDUM FOR: Victor Stello, Deputy Executive Director
Regional Operations and Generic
Requirements

FROM: Nunzio J. Palladino NJP

SUBJECT: REPORT TO THE CHAIRMAN ON THE APPLEGATE ALLEGATIONS

The Commission has completed its review of the report on the allegations of Thomas Applegate, and of the comments provided by you and others on that report. I discussed the results of that review as they pertain to you in my recent meeting with you.

The purpose of this memorandum is two-fold. The first is to state that the Commission is of the view that, with regard to the matters covered by the report, you acted in good faith, based on your understanding of Commission policy as it existed at that time.

The second purpose of this memorandum is to carry out the wish of the Commission that you receive a clear expression of our continued support and confidence.

We appreciate the diligence and candor with which you cooperated in this inquiry. Your input was most helpful in identifying the need for the Commission to clarify its current thinking about handling investigations related to wrong-doing and public health and safety matters.

cc: Commissioner Gilinsky
Commissioner Roberts
Commissioner Asselstine
Commissioner Bernthal
William J. Dircks

ITEM F

Boiling Water Reactors (BWR) Issues

Allegation

Sidetracking proposed regulations intended to decrease significantly the likelihood of a major radiation release in the event of a severe accident at any of the 24 commercial Boiling Water Reactors.

Response

The charge is unfounded. It was my office that proposed a backfitting program to improve the containment performance of the Mark I reactors and on July 11, 1989, the Commission directed that they be implemented. The sequence of events was as follows:

1. **January 12-13, 1989, ~~NRC~~ staff briefed ACRS on its proposals for backfitting the Mark I reactors so as to improve containment performance.**

2. **On January 19, 1989, the Nuclear Regulatory Commission's Advisory Committee on Reactor Safeguards recommended that implementation of the BWR containment performance improvements be deferred (memorandum attached)**

   > **We conclude that no risk-based reason has been identified which justifies singling out Mark I plants from the general population of LWRs.**

3. January 23, 1989, I forwarded to the Commission a Policy Issue paper presenting staff recommendations on Mark I containment

performance improvements and other safety enhancements. The recommendation was made to implement the actions via issuance of orders to achieve resolution of the issue more quickly. On July 11, 1989, the Commission issued a directive to the staff to begin implementation of the BWR containment performance improvement program.

UNITED STATES
NUCLEAR REGULATORY COMMISSION
ADVISORY COMMITTEE ON REACTOR SAFEGUARDS
WASHINGTON, D. C. 20555

January 19, 1989

The Honorable Lando W. Zech, Jr.
Chairman
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Chairman Zech:

SUBJECT: MARK I CONTAINMENT PERFORMANCE IMPROVEMENT PROGRAM

During the 345th meeting of the Advisory Committee on Reactor Safeguards, January 12-14, 1989, we heard a staff presentation on their draft proposed paper entitled, "Mark I Containment Performance Improvement Program." This matter was also discussed during our 344th meeting, December 15-16, 1988, and by our Subcommittee on Containment Systems on December 6, 1988. The Committee also discussed this issue during meetings held in July and December 1986 and December 1987. We also had the benefit of the documents referenced.

Mark I BWR plants have been singled out for special attention because of indications of a high probability that their containments may not be effective in mitigating severe core melt accidents. A conditional failure probability as high as 90 percent has been estimated for some accident sequences. Even if this estimate is shown to be valid, indications are that these plants do not present a risk to the public that is larger than average for LWRs, because the probability of core melt (i.e., the need for containment) is calculated to be lower than is typical for PWRs.

The package of improvements for Mark I plants being proposed by the staff is primarily directed toward lowering the probability of core melt without changing noticeably the conditional probability of containment failure. The staff has documented estimates of a factor of five to ten in the reduction of core melt probability due to internal accident initiators for plants that incorporate the proposed recommendations. Estimates of improvement in containment performance have not been calculated, although there are statements that the probability of failure will be reduced. We were told in an oral presentation that the improvements might reduce the conditional probability of failure to less than 50 percent. It was emphasized that this was only an estimate.

We have previously expressed our opinion that the Commission's safety goal is an appropriate standard for establishing how safe plants should be. We also have suggested in our letter dated April 15, 1986, that an implementation plan for the safety goal should provide a framework for assuring that plants have adequate defense in depth as well as assuring that they meet quantitative risk standards. As a class, Mark I plants, as indicated by several PRAs for particular plants, appear to conform to the quantitative risk standards. These plants may not have an appropriate balance between prevention and mitigation.*

On the basis of a limited analysis of the potential costs and benefits of the proposed improvements, the staff concludes that the improvements are generally cost beneficial and are thereby justified for all 24 Mark I plants. We do not agree. A number of assumptions used in the analysis seem not to provide a fair and balanced comparison of potential costs and benefits. It appears to us that there would be a wide variation in the conclusions if the analysis were done for each individual plant.

We conclude that no risk-based reason has been identified which justifies singling out Mark I plants from the general population of LWRs. There is a program to look at all plants to identify any possible "risk outliers." This is the Individual Plant Examination (IPE) program. We believe that Mark I plants should be analyzed as a part of this program and that vulnerabilities in individual plants can thereby be identified, analyzed, and corrected where necessary.

We recommend that the proposed improvement plan for Mark I containments be dropped so that licensee and NRC resources can concentrate on the more effective IPE approach.

Sincerely,

Forrest J. Remick
Chairman

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* For this discussion, we define prevention as those activities intended to keep the core from melting, and mitigation as those activities intended to keep fission products released from a melted core away from the public.

References
1. Draft Proposed Paper from V. Stello, Jr., Executive Director for Operations, to the Commissioners, Subject: Mark I Containment Performance Improvement Program (Predecisional), received January 13, 1989
2. U. S. Nuclear Regulatory Commission, Generic Letter 88-20, "Individual Plant Examination for Severe Accident Vulnerabilities - 10 CFR 50.54(f)," November 23, 1988

Boiling Water Reactors (BWR) Issues

Allegation

It would be worth inquiring into Mr. Stello's role in sidetracking proposed regulations intended to decrease significantly the likelihood of a major radiation release in the event of a severe accident at any of the 24 commercial Boiling Water Reactors.

Finding -

On January 23, 1989, Mr. Stello forwarded to the Commission a Policy Issue paper for the purpose of presenting staff recommendations on Mark I containment performance improvements and other safety enhancements. The recommendation was made to implement the actions via issuance of orders to achieve resolution of the issue more quickly.

On July 11, 1989, the Commission issued a directive to the staff to begin implementation of the BWR containment performance improvement program. The Nuclear Regulatory Commission's Advisory Committee on Reactor Safeguards recommended that implementation of the BWR containment performance improvements be deferred.

ACTION - Murley, NRR

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

OFFICE OF THE
SECRETARY

July 11, 1989

Cys: Stello
Taylor
Thompson
Blaha
Beckjord, RES
Jordan, AEOD
Scroggins, OC
WBeckner, RES
LSoffer, RES

R E V I S E D

MEMORANDUM FOR: Victor Stello, Jr.
Executive Director for Operations

FROM: Samuel J. Chilk, Secretary

SUBJECT: SECY-89-017 - MARK I CONTAINMENT PERFORMANCE IMPROVEMENT PROGRAM

This is to advise you that the Commission (with Chairman Zech and Commissioners Rogers and Curtiss agreeing) has approved the following actions in regard to the Mark I Containment Performance Improvement Program:

1. The staff should approve the immediate installation of a hardened vent by any Mark I licensee who chooses to do so under Section 50.59 of the Commission's rules.

2. The staff is directed to initiate plant-specific backfit analyses for each of the Mark I plants to evaluate the efficacy of requiring the installation of hardened vents at such plants. This should be accomplished taking into consideration the individual plant designs and their respective capabilities to withstand overpressurization events. Where the backfit analysis supports imposition of such a requirement, and after consideration of information from licensees, the staff should proceed accordingly with the imposition of a requirement that such plant install a reliable, hardened vent. The objective should be to complete this process, including installation of hardened vents where justified, within three years. The staff's backfitting schedule should include consideration of the refueling outage schedule for each plant in order to ensure that reasonable plant implementation dates are met.
   ~~(EDO)~~ (NRR) (SECY Suspense: 6/30/92) 8900121

3. For any plant which installs a hardened venting system, the staff should assure that appropriate operational and emergency procedures and training are in place to ensure effectiveness in maintaining containment integrity and in ensuring that venting pathway options and the authority for usage are clearly delineated.

Rec'd Off. EDO
Date 7-11-89
Time 11 A.

4. The staff should expedite its actions in the implementing of the Station Blackout Rule for Mark I plants. (Commissioners Roberts and Carr concur in this item.) (NRR)

5. The staff should forward to each Mark I owner the information regarding the other Mark I containment performance improvements the staff has identified for consideration during implementation of the Individual Plant Examination (IPE) program. All Commissioners strongly encourage the staff and industry to take the necessary steps to implement the IPE program in an expeditious fashion.

Staff should keep the Commission informed on the status and progress on the implementation of the above issues. 8900122
-~~(EDO)~~ (NRR) (SECY Suspense: semi-annual)

Commissioners Roberts and Carr, while agreeing with the majority on expediting staff review of the implementation of the Station Blackout Rule and implementation of the IPE program, do not believe that the Commission should proceed with installations of hardened vents at this time. They would include consideration of the vents in the IPE program, along with the other improvements identified by the staff, as recommended by the ACRS. They are concerned that any implementation of modifications to Mark I containments in piecemeal fashion may detract from, weaken, and possibly delay the IPE's due to licensees resource limitations.

Commissioner Roberts would like to receive the plant-specific backfit analyses prior to the imposition of any requirements on licensees. ~~was not available to review this SRM and he may provide additional comments~~
-~~(EDO)~~ (NRR) (SECY Suspense: when ready)

cc: Chairman Zech
Commissioner Roberts
Commissioner Carr
Commissioner Rogers
Commissioner Curtiss
OGC

Dr PDR

Comm Briefing
1-26-89
See 6/30/89
SRM
For approval interim
Revised
7/11/89

POLICY ISSUE
(Notation Vote)

January 23, 1989

SECY-89-017

For: The Commissioners

From: Victor Stello, Jr.
Executive Director for Operations

Subject: MARK I CONTAINMENT PERFORMANCE IMPROVEMENT PROGRAM

Purpose: To present staff recommendations on Mark I containment performance improvements and other safety enhancements.

Category: This paper covers a major policy question.

Summary: As noted in the Integration Plan for Closure of Severe Accident Issues (SECY 88-147) and in interim reports to the Commission (SECY 87-297 and SECY 88-206), the staff has undertaken a program to determine what actions, if any, should be taken to reduce the vulnerability of containments to severe accident challenges. The containment performance improvement effort is one main element of the integrated approach to closure of severe accident issues. Staff efforts have focused initially on BWR plants with a Mark I containment. The staff has now completed its assessment of generic severe accident challenges and failure modes as well as potential improvements for plants with the Mark I containment. The assessment of Mark II, Mark III, and other containment types are the subject of parallel but separate program efforts, as discussed in SECY 88-147.

Probabilistic Risk Assessment (PRA) studies have been performed for a number of BWRs with Mark I containments. These studies indicate that BWR Mark I risks are dominated by Loss of Long-term Decay Heat Removal, Station Blackout (SBO), and Anticipated Transient Without Scram (ATWS) sequences. Although these studies do not show the BWR Mark I plants to be risk outliers as a class relative to other plant designs, they do suggest that the Mark I containment integrity could be challenged by a large scale core melt accident, principally due to its smaller size. However, estimates of containment failure likelihood under such conditions are based on analysis of complex accident conditions, where there remains a broad band of uncertainty.

Contact: W. Beckner, RES
492-3975
L. Soffer, RES
492-3916

The staff has concluded that the optimum way to reduce overall risk in BWR Mark I plants is to pursue a balanced approach utilizing accident prevention and mitigation.

Based on our assessment, the staff recommends five specific improvements for Mark I containment plants: 1) an improved hardened vent capability, 2) improved reactor pressure vessel (RPV) depressurization system reliability, 3) an alternate water supply to the reactor vessel and drywell sprays, 4) extended emergency procedures and training and 5) accelerated staff actions to implement the station blackout rule. These improvements, although not representing large changes to the plants, form an integrated set which, when fully implemented, will substantially enhance the safety of Mark I plants by enhancing defense-in-depth, including improvement to containment performance. The staff has evaluated them and found them to be cost effective. The staff proposes that orders be issued to all licensees with Mark I containments to implement these improvements.

Background: The Reactor Safety Study (WASH-1400) found that, for the Peach Bottom BWR Mark I nuclear plant, even though the core melt probability was relatively low, the containment could be severely challenged if a large core melt occurred. Based on this conclusion and reinforced by the anticipation of similar findings (subsequently confirmed) in the draft Reactor Risk Reference Document (NUREG-1150, February 1987) a five element program was proposed in June 1986 to enhance the performance of the BWR Mark I containment. Elements of this proposal included 1) hydrogen control, 2) containment drywell spray, 3) containment venting, 4) core debris control, and 5) emergency procedures and training. After the initial proposal, the staff held two separate meetings in early 1987 with researchers representing NRC contractors and industry. There was a wide range of views expressed regarding accident phenomenology as well as the efficacy of the various improvements. In view of the lack of technical consensus on the effectiveness of the proposed improvements, the staff decided to undertake additional efforts. In July 1987, the staff informed the Commission of its intention to examine the Mark I issue in the context of an integrated approach to the closure of severe accident issues.

On December 18, 1987, the staff issued a plan (SECY 87-297) for resolving generic severe accident containment performance issues for Mark I and other containment types. As part of the plan, a workshop was held on February 24-26, 1988 to discuss a number of issues associated with Mark I containment challenges, failure modes and potential containment improvements with researchers, industry representatives and interested members of the public. A major topic at the workshop was the phenomena associated with containment steel shell meltthrough. Although uncertainties remain in estimating containment failure, there was a growing consensus that water in the containment may help mitigate risk by fission product scrubbing and possibly by preventing or delaying containment shell melt by core debris. This is discussed further in Enclosure 6. The Integration Plan for Closure of Severe Accident Issues, (SECY 88-147) characterizes the containment performance improvement effort as being one of the main elements of the integrated approach to closure of severe accident issues. Other main elements include a) Individual Plant Examinations (IPEs), b) improved plant operations, c) the severe accident research program, d) examination of external events, and e) a program on accident management. The containment performance improvement program is related to the IPE effort, and is considered complementary to it, since this effort is primarily focused on the potential generic vulnerabilities of specific containment classes, whereas the IPE effort is focused on plant unique vulnerabilities.

A Commission paper (SECY 88-206) dated July 15, 1988 provided a status report on the staff's efforts regarding the Mark I containment performance evaluation. This paper reaffirmed that the risk from BWR Mark Is is low. Nevertheless, the staff proposed a program intended to further reduce overall risk in BWR Mark I plants by pursuing a balanced approach involving accident prevention and mitigation. A number of safety enhancements were identified which appeared attractive in terms of their potential risk reduction capability as well as implementation costs.

Following that meeting the Commission requested additional information via a staff requirements memorandum dated August 1, 1988. Responses to these questions are included as Enclosure 1.

Discussion: Probabilistic Risk Assessment (PRA) studies for BWRs indicate that accidents initiated by transients rather than Loss-Of-Coolant-Accidents (LOCAs) dominate the total core damage frequency estimates. The principal accident sequences for BWRs consist of Long-term Loss of Decay Heat Removal (TW), Station Blackout (SBO), and Anticipated Transient Without Scram (ATWS). WASH-1400 indicated that TW is the dominant core damage accident sequence for Peach Bottom. Draft NUREG-1150, however, indicated that the dominant contribution to core melt frequency at Peach Bottom is due to Station Blackout, and estimated that TW has been greatly reduced at Peach Bottom by implementation of containment venting procedures with the assumption that said venting actions can be successfully accomplished. For those plants in which TW has been eliminated as the dominant contributor, the residual risk is largely due to

ATWS and SBO sequences. These studies also indicate that the estimated likelihood of core damaging accidents for existing Mark I plants is predicted to vary widely over two orders of magnitude or more. The primary containment challenges and potential failure modes for BWR Mark I containments are shown in Enclosure 2.

The staff has examined potential Mark I containment and plant improvements in the following six areas: (1) hydrogen control, (2) alternate water supply for reactor vessel injection and containment drywell sprays, (3) containment pressure relief capability (venting), (4) enhanced RPV depressurization system reliability, (5) core debris controls, and (6) procedures and training. Each of these was evaluated to determine their potential benefits in terms of reducing the (1) core melt frequency, (2) containment failure probability, and (3) offsite consequences.

Hydrogen Control:

Although BWR Mark Is are required to be operated with an inerted containment atmosphere, plant Technical Specifications permit de-inerting to commence 24 hours prior to plant shutdown, and do not require inerting to be completed until 24 hours after plant startup, in order to permit plant personnel access. In the event of a severe accident, such as a long-term station blackout, a concern was expressed that loss of control of the valves and containment leakage could eventually lead to containment de-inerting.

Two potential improvements with regard to hydrogen control were evaluated. These were: (1) elimination of the two 24 hour de-inerted periods and (2) providing a backup supply of nitrogen. Since the probability of a severe accident occurring during either of the two 24 hour de-inerted periods is small compared to the probability of accident occurrence during normal operations, eliminating this time of de-inerting would not significantly reduce risk.

During a severe accident, reactor pressure is anticipated to increase, releasing steam and non-condensable gases into the containment. This will increase containment pressure, preventing ingress of air. Therefore, the containment atmosphere would not become de-inerted for an extended period of time. Since offsite supplies of nitrogen could readily be obtained during this period, an onsite backup supply of nitrogen would not significantly reduce risk.

Therefore, the staff concludes that additional Mark I improvements to control hydrogen beyond the existing hydrogen control rule and the procedures in Revision 4 of the Emergency Procedure Guidelines would have no significant benefit and are not warranted.

Alternate Water Supply for Drywell Spray/Vessel Injection

An important proposed improvement would be to employ a backup or alternate supply of water and a pumping capability that is independent of normal and emergency AC power. By connecting this source to the low pressure residual heat removal (RHR) system as well as to the existing drywell sprays, water could be delivered either into the reactor vessel or to the drywell, by use of an appropriate valving arrangement.

An alternate source of water injection into the reactor vessel would greatly reduce the likelihood of core melt due to station blackout or loss of long-term decay heat removal, as well as provide significant accident management capability.

Water for the drywell sprays would also provide significant mitigative capability to cool core debris, to cool the containment steel shell to delay or prevent its failure, and to scrub air borne particulate fission products from the atmosphere.

A review of some BWR Mark I facilities indicates that most plants have one or more diesel driven pumps which could be used to provide an alternate water supply. The flow rate using this backup water system may be significantly less than the design flow rate for the drywell sprays. The potential benefits of modifying the spray headers to assure a spray were compared to having the water run out of the spray nozzles. Fission product removal in the small crowded volume in which the sprays would be effective was judged to be small compared to the benefit of having a water pool on top of the core debris. Therefore, modifications to the spray nozzles are not considered warranted.

Containment Pressure Relief Capability (Venting):

Venting of the containment is currently included in BWR emergency operating procedures. The vent path external to existing containment penetrations typically consists of a ductwork system which has a low design pressure of only a few psi. Venting under high pressure severe accident conditions would fail the ductwork, release the containment atmosphere into the reactor building, and potentially contaminate or damage equipment needed for accident recovery. In addition, with the existing hardware and procedures at some plants, it may not be possible to open or to close the vent valves for some severe accident scenarios. The staff has concluded that venting, if properly implemented, can have a significant benefit on plant risk. However, venting via a sheet metal ductwork path, as currently implemented at some Mark I plants, is likely to greatly hamper or complicate post-accident recovery activities, and is therefore viewed by the staff as yielding reduced improvements in safety. The capability to vent has long been recognized as important in reducing risk from operation of BWR Mark I facilities for loss of long term decay heat removal events. Controlled venting can prevent the failure of ECCS pumps from inadequate net positive suction head and re-closure of the ADS valves. The staff agrees with this view as long as the potential downsides of using the existing hardware are corrected.

A hard pipe vent capable of withstanding the anticipated severe accident pressure loadings would eliminate these disadvantages. The vent isolation valves should also be remotely operable from the control room and should be provided with a power supply independent of normal or emergency AC power. Other changes, such as raising the RCIC turbine back pressure trip setpoint, may also be desirable and should be considered as part of the IPE. This capability, in conjunction with proper operating procedures and other improvements discussed in this paper, would result in greatly reducing the probability of core melt due to the TW and SBO sequences.

Given a core melt accident, venting of the wetwell would provide a scrubbed venting path to reduce releases of particulate fission products to the environment. Venting has been estimated to reduce the likelihood of late containment over-pressure failure and to reduce offsite consequences for severe accident scenarios in which the containment shell does not fail for other reasons. Failure of the shell due to core debris attack (shell meltthrough) would reduce the benefits from venting in that it would release fission products directly into the reactor building.

Inadvertent venting could result in the release of normal coolant radioactivity to the environment even when core degradation is averted or vessel integrity maintained. Measures to reduce the probability of inadvertent venting should be considered in the vent design.

Enhanced Reactor Pressure Vessel (RPV) Depressurization System Reliability:

The Automatic Depressurization System (ADS) consists of relief valves which can be manually operated to depressurize the reactor coolant system. Actuation of the ADS valves reouires DC power. In an extended station blackout after station batteries have been depleted, the ADS would not be available and the reactor would re-pressurize. With enhanced RPV depressurization system reliability, depressurization of the reactor coolant system would have a greater degree of assurance. Together with a low pressure alternate source of water injection into the reactor vessel, the major benefit of enhanced RPV depressurization reliability would be to provide an additional source of core cooling which could significantly reduce the likelihood of high pressure severe accidents, such as from the short-term station blackout.

Another important benefit is in the area of accident mitigation. Reduced reactor pressure would greatly reduce the possibility of core debris being expelled under high pressure, given a core melt and failure of the reactor pressure vessel. Enhanced RPV depressurization system reliability would also delay containment failure and reduce the quantity and type of fission products ultimately released to the environment. In order to increase reliability of the RPV depressurization system, assurance of electrical power beyond the requirements of existing regulations may be necessary as discussed later in this paper. In addition, performance of the cables needs to be reviewed for temperature capability during a severe accident.

Core Debris Controls:

Core debris controls, in the form of curbs in the drywell and/or curbs or weir walls in the torus room under the wetwell have been proposed in the past to prevent containment shell meltthrough and to retain sufficient water to permit fission product scrubbing. However, as noted in SECY 88-206, the technical feasibility for such controls has not been established, and the design and installation costs as well as the occupational exposure during installation could be significant. There is a growing consensus that water in the containment (from an alternate supply to the drywell sprays) may help mitigate risk by fission product scrubbing and possibly by preventing or delaying containment shell melt by core debris. Research is continuing in order to confirm and help quantify these initial conclusions.

A discussion of Mark I shell meltthrough phenomena and the current state of knowledge is included in Enclosure 6.

Emergency Procedures and Training:

A major element of the Mark I containment performance improvement evaluation involves emergency procedures and training. Current emergency operating procedures (EOPs) are symptom-based procedures that originated from requirements of TMI Task Action Plan item I.C.1. Plant-specific EOPs are generally implemented based on generic Emergency

Procedure Guidelines (EPGs) developed by the BWR Owners Group. As part of the balanced approach to examining potential BWR Mark I plant improvements, both the generic EPGs and the plant-specific implementation of EOPs and training have been examined.

NRC has recently reviewed and approved Revision 4 of the BWR Owners Group EPGs (General Electric Topical Report NEDO-31331, BWR Owner's Group "Emergency Procedure Guidelines, Revision 4," March 1987). Revision 4 to the BWR Owners Group EPG is a significant improvement over earlier versions in that they continue to be based on symptoms, they have been simplified, and all open items from previous versions have been resolved. The BWR EPGs extend well beyond the design bases and include many actions appropriate for severe accident management.

The improvement to EPGs is only as good as the plant-specific EOP implementation and the training that operators receive on use of the improved procedures. A recent staff safety evaluation report (Ltr. Thadani to Grace, "Safety Evaluation of 'BWR Owners' Group - Emergency Procedure Guidelines, Revision 4,' NEDO-31331, March 1987," dated September 12, 1988) encouraged licensees to implement Revision 4 of the EPGs and reiterated the need for proper implementation and training of operators. Implementation of the guidelines has been voluntary, but is strongly recommended in the SER.

Impact of Existing Requirements:

As part of the balanced approach, for completeness, and to provide a more accurate picture of Mark I plant risk, the staff has also evaluated the impact on Mark I risk of several recent rules that have been imposed on light water reactors - the Station Blackout Rule and the ATWS Rule. As discussed earlier, PRAs typically indicate that Mark I reactor risks are dominated by TW, SBO and ATWS sequences. Upon implementation of these two rules at all Mark I plants, risk from SBO and ATWS sequences would be expected to be substantially reduced. Implementation of the ATWS rule is essentially complete. The staff intends to assure that, for the BWR Mark I plants, the improvements required by the SBO rule and those being proposed in this paper are appropriately coordinated. The response to Question #2 in Enclosure 1 provides a discussion of expected risk reductions from changes to Mark I plants as a result of these rules.

Assuring the operability of the proposed improvements under severe accident conditions, including an extended period of station blackout, may require assurance of electrical power beyond the requirements of the recent Station Blackout (SBO) rule, 10 CFR 50.63. The proposed improvements have been coordinated with the requirements of the SBO rule in order not to cause an undue proliferation of power supplies, which could be counter-productive to safety. The staff proposes that licensees intending to implement the SBO rule by use of an alternate AC (AAC) source, need not provide additional electric power supplies for the proposed Mark I improvements, provided that the capacity of the AAC is sufficient for the requirements of both the SBO rule and the improvements proposed here. Further details are given in Enclosures 7 and 8.

Benefit of Improvements:

The improvements that the staff is recommending include: (1) an improved hardened venting capability, (2) improved RPV depressurization system reliability, (3) an alternative water supply to the reactor vessel and drywell sprays, and (4) emergency procedures and training. Accelerated staff review of the implementation of the existing station blackout rule for Mark I plants is also planned. These improvements are unchanged from those indicated in the interim report (SECY 88-206) to the Commission.

A major benefit of these improvements is that they can provide a reduction in core melt frequency of about a factor of five to ten. With the proposed enhancements, the core melt frequency would be expected to be reduced to about 1 to $2x10^{-5}$ per reactor-year. It should be noted that these estimates apply to internal events only.

For plants with a high TW probability, a large fraction of the reduction in core melt frequency is attributable to improved venting which, by allowing the removal of long-term decay heat from the containment, greatly reduces the likelihood of core melt from the TW sequence. Another reduction in core melt frequency from station blackout is attributable to the enhancements taken together. In the event of station blackout, enhanced RPV depressurization reliability would permit depressurization of the reactor, availability of a low pressure backup source of water injection into the vessel would permit core cooling, while venting would allow decay heat removal from the containment. It is important to note that under these circumstances, venting would greatly reduce the likelihood of core damage and not result in releases of fission products of any significance.

Accident mitigation benefits are also considered to be significant. Mitigation of fission product releases would be realized for all accident sequences, including ATWS scenarios. Venting would be effective in preventing containment failure arising from slow over-pressurization. Venting via the suppression pool would provide significant scrubbing of non-noble gas fission products by about a factor of 10 to 100 if no containment shell failure occurs. Water in the drywell may be effective in preventing or at least delaying failure of the containment shell by molten core debris. Finally, even if shell failure should occur, the presence of a water layer atop the core debris combined with the drywell spray would reduce any source term releases to the environment by a factor judged to range from 2 to 10. This represents a significant enhancement of defense-in-depth.

Because of the combination of reduced core melt likelihood, reduced fission product releases due to mitigation, and possible reduction or elimination of a significant containment failure mode, the staff concludes that the overall risk reduction of the proposed improvements is in excess of one order of magnitude.

The benefits of the proposed enhancements in terms of their reduction in offsite risk can be calculated in terms of person-rem. Depending upon the probability of core melt due to the TW sequence the estimated reduction in risk, expressed in person-rem, for the proposed enhancements ranged from about 145 person-rem per reactor-year to about 1330 person-rem per reactor-year, for plants having a probability of core melt due to TW of $1x10^{-5}$ per reactor-year and $1x10^{-4}$ per reactor-year, respectively. Of this total value, the risk reduction produced by lowering the likelihood of core melt due to station blackout and mitigation of ATWS accounts for a reduction of about 33 to 210 person-rem per reactor-year. For plants whose probability of core melt due to the TW sequence is high (about 10^{-4} per reactor-year), the bulk of the risk reduction can be attributed to the large reduction in the TW sequence brought about by improved venting. Additional details are provided in Enclosure 4.

Finally, as noted earlier, the recommended improvements form an integrated set in the sense that they complement each other in prevention or mitigation. This results in the maximum risk reduction when all are taken together.

Summary of Costs of Improvements:

Cost estimates were made of the proposed improvements. These are given in Enclosure 3 which provides a cost summary for all improvements that includes high and low estimates ranging from \$3.1 to \$1.6 million dollars. Estimates of cost as high as \$7.3M were obtained based on actual costs of similar improvements at an existing Mark I plant. For purposes of the regulatory analysis included in Enclosure 4, a cost range of \$2.0M to \$7.3M has beer used. Actual costs at many plants may be less since, as shown in Enclosure 5, some plants already have many features of the proposed improvements.

onclusions: Many of the proposed enhancements would require plant backfits. The staff has examined these in light of the backfit rule, 10 CFR 50.109. Section (a) 3 of that regulation indicates that the Commission shall require backfitting only when "there is a substantial increase in the overall protection of the public health and safety" and "that the direct and indirect costs ... are justified in view of this increased protection".

In reaching a conclusion with respect to the first test indicated above, the staff considered the effect of the proposed enhancements upon reductions in core melt frequency and improved containment performance. A major benefit of these enhancements is in their ability to reduce the likelihood of core melt. Core melt frequencies for BWR Mark I plants prior to any of the enhancements considered would be expected to range from about $1\text{x}10^{-4}$ to $2\text{x}10^{-5}$ per reactor year. With the combined enhancements, core melt frequency would be reduced by about a factor of five to ten. Thus, the proposed enhancements clearly offer a substantial reduction in core melt frequency. The core melt frequency reductions do not give credit for existing venting capability assumed in NUREG-1150 since the current venting capability at plants has significant uncertainty regarding its overall effectiveness.

The increased ability to cool core debris and to remove excess heat from the containment by venting, given the occurrence of an accident, is also expected to reduce the likelihood of containment failure, although this is not as readily quantifiable because of the uncertainty in core melt progression and containment shell meltthrough phenomenology which is discussed in Enclosure 6. In addition, the ability to scrub particulate fission products by use of venting through the suppression pool and by the use of a water layer atop any core debris also adds significant mitigative capability.

Since the proposed enhancements would be expected to reduce the likelihood of core melt by about a factor of five to ten, and provide significant additional accident mitigation capability as well, the staff concludes that the proposed enhancements provide a substantial increase in the overall protection of the public health and safety as well as providing enhanced defense-in-depth.

With regard to the second or cost-benefit test required by the backfit rule, the discussion given earlier has shown that the costs of the enhancements are estimated to range from 1.6 to 3.1 million dollars per plant, although similar improvements at an existing Mark I plant may have cost about 7.3 million dollars. Both the estimated cost and the cost associated with an existing Mark I plant were used in the cost-benefit analysis. Based on the results of a survey of nine Mark I plants, the staff believes that many plants have some of these improvements already in place. Since the estimated benefits ranged from 3.6 to 33 million dollars per plant based upon 1000 dollars per person-rem and an average remaining plant life of 25 years for Mark I plants, the staff concludes that the proposed enhancements are generally cost beneficial.

For the reasons stated above, the staff concludes that backfit of these proposed enhancements is warranted for all Mark I plants.

Options:

1. Take no action. Pro: No further resources would be required. Con: This option would result in a situation where a number of enhancements to safety that the staff believes to be cost effective would not be implemented and closure of severe accident issues would not be obtained for Mark I plants.

2. Issue a generic letter. Pro: This option would be the quickest way to inform licensees of the staff's views and would require the least resources. Con: The generic letter can inform industry of the staff's finding, but can only request, not require, licensees to make changes to their facilities.

3. Issue an order. Pro: This option could be accomplished quickly and provide a regulatory requirement to implement the improvements. Con: This option could result in requests for hearings from both licensees and intervenors contesting the orders which could result in lengthy delays. A draft proposed order is included as Enclosure 7.

4. Initiate Rulemaking. Pro: This option would provide a regulatory basis for requiring the improvements. It is generally preferable to impose generic requirements by rule. Con: This option would require some staff resources and cause a delay in implementing the proposed improvements. A draft proposed rule is attached as Enclosure 8.

Recommendations:

The proposed improvements could be implemented as a regulatory requirement either by use of orders or through rulemaking. Of these two viable options, although the staff considers that it is generally preferable to impose generic requirements by rule, it is believed that, absent a hearing, the improvements could be carried out more quickly via orders. Therefore, in order to implement these improvements which represent a substantial enhancement to the safety of Mark I plants, the staff recommends that orders be issued to require the improvements. The staff would also prepare an Environmental Assessment of venting of the containment using the improved hardware and procedures.

Coordination: OGC has no legal objections, but views rulemaking as the preferred option due to the potential for delay beyond NRC's control if hearings are requested. The Committee for Review of Generic Requirements has recommended an expedited rulemaking to require these improvements. The ACRS has reviewed these recommendations and will provide their comments separately.

Victor Stello, Jr.
Executive Director
for Operations

Enclosures:
1. Response to Commission Questions
2. Mark I Challenges and Relative Likelihood of Failure Modes
3. Summary of Costs
4. Regulatory Analysis
5. Results of Survey of Mark I Plants
6. Mark I Liner Melt Status
7. Draft Proposed Order
8. Draft Proposed Rule

Commissioners' comments or consent should be provided directly to the Office of the Secretary by c.o.b. Wednesday, February 8, 1989.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Monday, January 30, 1989, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

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Stello/White Conversation

Allegation

Advising the manager of a utility, in a telephone conversation, not to provide a definitive answer to NRC's questions.

Response

Four investigations were conducted and the allegation was not substantiated. The investigation's conclusions concerning the Stello/White conversation are quoted below:

1. An August 7, 1987 Report of the Committee on Governmental Affairs, United States Senate concluded that:

   > The Committee finds OIA's investigation of Stello failed to gather all of the relevant facts. In presenting this case study, the Committee does not attempt to draw any conclusions about whether Stello engaged in improper conduct.

2. An April 22, 1988 Report from David C. Williams of the General Accounting Office concerning a special inquiry conducted by Mr. Williams concluded that:

   > Accordingly, GAO's investigation substantiated that the Stello-White conversation did not contravene relevant NRC regulations as applied at the time in question.

3. A May 26, 1988 Report to the Committee by the Environment and Public Works, United States Senate concluded that:

> The Subcommittee found no evidence to indicate that the telephone conversation between Victor Stello, Jr., and Steve White of March 20, 1986 involved any improper effort by Stello to coach White through the preparation and submission of TVA's response to the Commission's letter of January 3, 1986.

4. On August 28, 1988, the investigative report of the NRC Office of Inspector and Auditor concluded that:

> There was no information developed during this inquiry to substantiate any impropriety on the part of Stello during his telephone conversation with White.

Because of the pending investigation regarding the phone call from Steve White, I formally recused myself from participating in the NRC's investigation of Mr. White and in the subsequent enforcement action against TVA.

MEMORANDUM FOR: Chairman Zech
Commissioner Roberts
Commissioner Asselstine
Commissioner Bernthal
Commissioner Carr

AUG 28 1986

FROM: Sharon R. Connelly, Director
Office of Inspector and Auditor

SUBJECT: EXECUTIVE DIRECTOR FOR OPERATIONS - ALLEGATIONS OF IMPROPRIETY

Attached is the Office of Inspector and Auditor's (OIA) Memorandum Report documenting our investigation of an allegation that Victor Stello, Jr., Executive Director for Operations, improperly discussed with Steven A. White, Manager of Nuclear Power, Tennessee Valley Authority (TVA) a proposed letter from White to NRC concerning whether 10 CFR 50 Appendix B requirements were being met at the TVA Watts Bar Nuclear Power Plant.

CONCLUSION

The OIA inquiry developed no information to substantiate any impropriety on the part of Stello during his conversation with White.

ORIGINAL SIGNED BY:

Sharon R. Connelly, Director
Office of Inspector and Auditor

Attachment:
Memorandum Report

cc: K. Callahan, w/o attachment

FREEDOM OF INFORMATION/PRIVACY ACT EXEMPTION (b)(5)(6)(7)(C)

CONTACT: George A. Mulley, Jr.
OIA - x24451

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MEMORANDUM FOR: Chairman Zech
Commissioner Roberts
Commissioner Asselstine
Commissioner Pernthal
Commissioner Carr

OCT 0 1 1986

FROM: Sharon P. Connelly, Director
Office of Inspector and Auditor

SUBJECT: DISCUSSION BY CONGRESSIONAL OVERSIGHT AND INVESTIGATIVE SUBCOMMITTEE CONCERNING VICTOR STELLO, EDO, AND STEVEN WHITE, TVA, TELEPHONE CONVERSATION

During a meeting on October 1, 1986, of the Oversight and Investigation Subcommittee, House Committee on Energy and Commerce, questions were raised concerning a telephone conversation which occurred between Victor Stello, Jr., Executive Director for Operations and Steven White, Tennessee Valley Authority (TVA). The telephone call was made by White to Stello on March 20, 1986, and concerned a proposed letter from White to the NRC on whether 10 CFR Part 50, Appendix B requirements were being met at the TVA Watts Bar Nuclear Power Plant.

On August 28, 1986, the Office of Inspector and Auditor completed an inquiry regarding an allegation that Stello had improperly discussed the proposed letter with White. Our inquiry developed no information to substantiate any impropriety on the part of Stello during his conversation with White.

We have no objections to releasing the attached copy of our inquiry to the Subcommittee if it would help in clarifying their question(s) in this matter.

ORIGINAL SIGNED BY:
Sharon R. Connelly, Director
Office of Inspector and Auditor

Attachment:
As stated

cc: M. Callahan, OCM

CONTACT: George A. Mulley, Jr.
OIA - x24451

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~~File S-186-30~~

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Memorandum Report

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

AUG 2 8 1986

MEMORANDUM REPORT

SUBJECT: EXECUTIVE DIRECTOR FOR OPERATIONS -
ALLEGATIONS OF IMPROPRIETY

OIA FILE: I86-30

BACKGROUND

On April 7, 1986, Ben B. HAYES, Director, Office of Investigations, U.S. Nuclear Regulatory Commission (NRC) reported to Sharon R. CONNELLY, Director, Office of Inspector and Auditor (OIA), NRC, that Victor STELLO, Jr., Executive Director for Operations (EDO), NRC, had a telephone conversation with Steven A. WHITE, Manager of Nuclear Power, TENNESSEE VALLEY AUTHORITY (TVA). The conversation with WHITE allegedly pertained to a TVA letter to NRC concerning whether 10 CFR 50, Appendix B requirements were being met at the TVA WATTS BAR NUCLEAR POWER PLANT (WATTS BAR). Harold R. DENTON, Director, Office of Nuclear Reactor Regulation (NRR), NRC and James E. TAYLOR, Office of Inspection and Enforcement (IE), NRC were allegedly present during the conversation between STELLO and WHITE.

SUMMARY

HAYES, when interviewed by OIA (Attachment 1), related that during a discussion, DENTON told him that while DENTON, TAYLOR and STELLO were riding in an NRC automobile, STELLO had a telephone conversation with WHITE on the mobile telephone. The conversation concerned a TVA letter prepared by WHITE and his staff regarding the TVA position with respect to whether 10 CFR 50, Appendix B requirements were being met at WATTS BAR. HAYES was uncertain whether the conversation took place prior to or after WHITE officially

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FREEDOM OF INFORMATION/PRIVACY ACT EXEMPTION (b)(5)(6)(7)C) submitted his letter to the NRC. HAYES stated that, in his opinion, NRC dealings with WHITE should be on the record to avoid the perception of any impropriety. HAYES' concern was in light of the fact that OI had an on-going investigation of an alleged material false statement in connection with a previous TVA letter indicating WATTS BAR was ready to be licensed, and any response from WHITE would play a role in that investigation.

DENTON and TAYLOR stated to OIA (Attachments 2 and 3) that on approximately March 20, 1986, while riding in an NRC van they overheard a telephone conversation between STELLO and WHITE. The conversation involved a TVA letter to NRC about TVA meeting the requirements of 10 CFR 50, Appendix B at WATTS BAR. The conversation involved WHITE reading his letter to STELLO, STELLO cautioning WHITE about the type of letter he was sending to the NRC, and STELLO and WHITE discussing the TVA letter.

DENTON stated he was uncomfortable with the telephone call. He believed WHITE was attempting to canvas the staff for the NRC's feelings on an appropriate response. DENTON felt that WHITE was pressing too hard for pre-approval and believed that this matter should have been handled by the NRC in a more hands-off manner because it was a highly controversial issue. DENTON did not believe that STELLO compromised the NRC position by his discussion with WHITE.

TAYLOR stated to OIA that based on the issues and complexity of the situation at TVA, he believed that the telephone conversation between STELLO and WHITE was inappropriate. It made TAYLOR feel uncomfortable because he knew the ball was in TVA's court and the staff should have stayed out of it until NRC received the TVA letter.

STELLO stated to OIA (Attachment 4) that on March 20, 1986, while in an NRC van, he received the telephone call from WHITE who believed it was important to call and read to STELLO the TVA letter responding to NRC's questions concerning whether WATTS BAR met the requirements of 10 CFR 50, Appendix B. During the conversation, STELLO suggested to WHITE that he needed to make the point in his letter that he (WHITE) was continuing to look at this particular issue and he would let the NRC know if he later found a problem. STELLO believed this was necessary because the scope of what WHITE did was limited and there was still much more reviewing to do. STELLO asserted that in no way did his discussion with WHITE constitute approval of the TVA response nor did he assist WHITE prepare the TVA letter.

On August 26, 1986, Sebastian ALOOT, Attorney, Office of the General Counsel, NRC, was apprised of the findings of this inquiry and stated that there was no apparent conflict of interest or impropriety on the part of STELLO.

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CONCLUSION

There was no information developed during this inquiry to substantiate any impropriety on the part of STELLO during his telephone conversation with WHITE.

Anthony Ward, Investigator
Office of Inspector and Auditor

George A. Mulley
George A. Mulley, Jr., Assistant Director
for Investigations
Office of Inspector and Auditor

Attachments:
1. Statement of Ben B. HAYES dated April 11, 1986
2. Report of Interview of Harold R. DENTON dated June 10, 1986
3. Report of Interview of James E. TAYLOR dated June 16, 1986
4. Statement of Victor STELLO, Jr., dated July 30, 1986

UNITED STATES
NUCLEAR REGULATORY COMMISSION
Office of Governmental and Public Affairs
Washington, D.C. 20555

No. 88-46
Tel. 301/492-0240

FOR IMMEDIATE RELEASE
(Monday, April 25, 1988)

SPECIAL INQUIRY ON NRC MATTERS COMPLETED

Nuclear Regulatory Commission Chairman Lando W. Zech, Jr., announced today that the NRC has received a report from David C. Williams of the General Accounting Office concerning a special inquiry conducted by Mr. Williams into three internal matters of concern to NRC and the Congress. Mr. Williams, head of GAO's Office of Special Investigations, conducted the independent inquiry at the request of the Commission. His report was made public today by the NRC.

In releasing the report, Chairman Zech said:

"David Williams has performed an important service to the Commission. I agree with his comment that the important mission and critical safety role of the NRC require that it possess a first-rate investigative capability with resources that will assure the NRC's ability to perform its function in a professional, competent manner. I am pleased that Mr. Williams' investigation found that the evidence does not support the allegation of improper discussions between the Executive Director for Operations and an official of TVA. I also am pleased that no evidence was developed to indicate that substantive changes were made in the Office of Inspector and Auditor investigative report on the Comanche Peak matter during the review and editing stage. The Williams report recognizes that we already have reviewed the policies and procedures for handling allegations involving Commissioners and their offices. The Commission will give careful consideration to Mr. Williams' entire report in our continuing efforts to assure that we carry out our investigative responsibilities fairly and efficiently."

Mr. Williams' inquiry at NRC focused on the adequacy of an Office of Inspector and Auditor (OIA) investigation of allegations of staff misconduct involving the Comanche Peak plant under construction in Texas; the adequacy of an OIA investigation of allegations of improper communication between Victor Stello, NRC Executive Director for Operations, and Steven White of the Tennessee Valley Authority; and the circumstances under which Mid-South Utilities obtained an internal NRC document that appears to have come from the files of Commissioner Thomas Roberts' office, and the subsequent handling of that matter.

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United States General Accounting Office

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SPECIAL REPORT

Office of Special Investigations

NOTICE: Further release of this document may not be in the best interests of the government for reasons stated herein.

United States
General Accounting Office
Washington, D.C. 20548

Office of Special Investigations

April 22, 1988

The Honorable Lando W. Zech, Jr.
Chairman
Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Chairman:

The U.S. General Accounting Office, Office of Special Investigations, has investigated three matters bearing on the adequacy of the Nuclear Regulatory Commission's (NRC) investigative proceedings and practices. Enclosed is our statement of findings.

We have provided this report to the requestors: Chairman Morris K. Udall, Subcommittee on Energy and the Environment, House Committee on Interior and Insular Affairs; Chairman John D. Dingell, Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce; Chairman Philip R. Sharp, Subcommittee on Energy and Power, House Committee on Energy and Commerce; and Congressman Edward J. Markey, Committee on Energy and Commerce, and Committee on Interior and Insular Affairs.

As agreed by our requestors, we are providing a copy of the report to you as the Chairman of the NRC.

Should you have any questions regarding the content of this report, please contact me at (202) 272-5500.

Sincerely yours,

David C Williams
David C. Williams
Director

Enclosure

On June 22, 1987, four members of the U.S. House of Representatives requested that the U.S. General Accounting Office (GAO), Office of Special Investigations, investigate three matters bearing on the adequacy of the Nuclear Regulatory Commission's (NRC) investigative proceedings and practices. Specifically, these members, Congressmen Morris K. Udall, Edward J. Markey, Philip R. Sharp, and John D. Dingell, asked that GAO do the following:

-- Ascertain if the NRC Office of Inspector and Auditor (OIA) properly investigated and accurately reported on allegations relating to the inspection program at the Comanche Peak Steam Electric Station (CPSES). An NRC inspector at that Texas facility charged that he had been harassed, intimidated, and pressured by his superiors to alter or delete findings from his reports.

— Evaluate the thoroughness of OIA's investigation of an allegedly improper discussion between the NRC's Executive Director for Operations (EDO) and an official of the Tennessee Valley Authority (TVA). The discussion concerned a major NRC enforcement initiative focused on TVA.

— Determine if the NRC properly handled the question of whether a regulated utility had uncontrolled access to internal NRC documents. These documents concerned defects in a Louisiana nuclear plant and were found in the possession of the utility licensed to construct that plant.

In follow-up meetings with the requestors, GAO was asked to expand the scope of the work as necessary. Therefore, GAO reinvestigated certain portions of each of the three matters.

In summary, we have concluded on the basis of our investigation that the evidence does not support the allegations concerning the inspector at CPSES or the allegation of improper discussions between the EDO at the NRC and an official of TVA. However, as discussed in detail below, our work revealed a number of serious deficiencies in the conduct of these investigations by the NRC. We have concluded that the allegation concerning access by a regulated utility to internal NRC documents was also improperly handled.

BACKGROUND

The NRC is responsible for licensing and regulating nuclear facilities and materials, and for conducting research in support of the licensing and regulatory process, as mandated by the Atomic Energy Act of 1954, as amended. OIA is the internal investigative arm of the NRC and is charged with investigating misconduct by NRC employees and verifying the adequacy of NRC operations.

On April 9, 1987, during a hearing conducted by the Senate Committee on Governmental Affairs concerning the need to legislate an independent NRC inspector general, allegations surfaced that reflected on the adequacy of the NRC's internal investigative processes. After the Senate hearings, the NRC Chairman, Lando W. Zech, Jr., and four members of the U.S. House of Representatives called for an independent review of the allegations.

In response to the Congressmen's request, in July 1987 GAO initiated an investigation of the three cases. This report includes the histories of the three incidents, the NRC's handling of the matters, and GAO's investigative analysis of the NRC's disposition of the matters.

METHODOLOGY

GAO's investigation included a review of the following:

-- the NRC's policy documents, applicable laws, regulations, and standards;

-- relevant NRC investigative reports;

-- thousands of pages of transcribed interviews and congressional testimony that related to the three matters;

-- relevant OIA case files;

-- pertinent NRC correspondence with various congressional committees; and

-- other related documents, such as the report prepared by the Comanche Peak Report Review Group.

GAO supplemented its evaluation of documents with interviews of individuals involved in the three matters.

CASE 1: COMANCHE PEAK STEAM ELECTRIC STATION

Results in Brief

Although OIA's report might have reached the proper conclusion with respect to allegations of harassment and intimidation of NRC Inspector Shannon Phillips, GAO found serious problems with OIA's investigative processes. Phillips' allegations called into question the handling of inspection findings by NRC Region IV managers. Among other things, GAO found that OIA did not interview several witnesses who could have added a needed perspective to Phillips' allegations. Furthermore, GAO found insufficient evidence to support the OIA investigator's claims that NRC managers interfered with the conduct of the OIA investigation or that the results were incorrectly reported.

Background

In March 1986, Shannon Phillips, an employee of NRC Region IV in Texas, telephoned NRC Commissioner James Asselstine and outlined allegations concerning Region IV's management of its inspection program at the Comanche Peak Steam Electric Station. Phillips serves as the Senior Resident Inspector for Construction at CPSES. Asselstine referred the allegations to the acting Director of OIA, Gary Eddles, and expressed concern that Phillips' allegations were serious and warranted attention. (OIA's Director, Sharon Connelly, was on administrative leave pending completion of an investigation of her conduct in the handling of an unrelated matter. Connelly returned to her duties as head of OIA on March 28, 1986.) In agreement with Asselstine, Eddles assigned OIA Investigator George Mulley to conduct the inquiry. Additionally, he agreed that all interviews would be conducted under oath and be transcribed.

On March 19, 1986, Mulley interviewed Shannon Phillips under oath. In the interview, Phillips made the following allegations:

-- In January 1986, his Region IV supervisor, Thomas Westerman, made a statement about Inspection Report 84-32/11 that Phillips considered threatening.

-- Westerman directed him to delete from draft Inspection Report 85-07/05 any reference to an inspection trend analysis that Phillips had performed at the direction of his former supervisor. The analysis was a computation of data relating to the frequency of unresolved quality assurance issues.

-- Westerman had harassed and pressured him and another inspector to change or delete findings in draft Inspection Report 85-07/05.

-- Region IV's data on NRC Form 766, Inspector's Report, was inaccurate. The 766 program is an information management system designed to capture, maintain, and report statistical and planning data concerning inspection and enforcement activities.

-- Westerman made improper statements for a regulator.

-- Westerman directed him to destroy drafts of Inspection Reports 85-07/05 and 85-13/09 because a Freedom of Information Act request had been received.

-- Westerman had pressured and harassed him over technical differences on draft Inspection Report 85-14/11.

-- Westerman improperly handled the allegations of a consultant group working for the utility.

-- Westerman had pressured, harassed, and intimidated him to change draft Inspection Report 85-16/13.

-- Eric Johnson, a Region IV manager, criticized him for how he had written a memorandum concerning possible wrongdoing relating to fire seals.

-- Johnson told the Senior Resident Inspector at the Fort St. Vrain facility in Region IV not to write certain violations and to downgrade others.

Phillips further claimed that his disagreement with Region IV management's handling of his allegations resulted in his being harassed, intimidated, and isolated by Region IV management.

Between March 19, 1986, and November 26, 1986, Mulley, with the assistance of technical and support staff, investigated the allegations and prepared a 47-page report with attachments detailing the findings. The report, entitled Allegations of Misconduct by Region IV Management With Respect to the Comanche Peak Steam Electric Station, was issued on November 26, 1986, as OIA Report 86-10. The report concerned the allegations made by Phillips and was divided into the following three issues:

(1) Did Region IV management harass and intimidate inspectors to pressure them to downgrade or delete proposed inspection findings at CPSES?

(2) Was the Region IV Quality-Assurance Inspection Program at CPSES inadequate?

(3) Was data documented in Region IV's NRC Form 766, Inspector's Report, inaccurate?

In reference to the first allegation, the OIA report concluded that Phillips' findings were downgraded or deleted from draft inspection reports and that these changes were made at the direction of Region IV management. Mulley's technical advisors questioned the actions taken by Region IV management regarding certain inspection findings; however, OIA's investigation failed to substantiate that the Region IV supervisor, Westerman, intentionally harassed or threatened Phillips in connection with these findings.

The OIA report generally concluded that the second and third allegations were accurate, and reviews performed by the technical assistants were used to buttress OIA's conclusions.

OIA Report 86-10 had considerable impact on the NRC. In response, in January 1987 the Commission approved the formation of a special review group comprised of senior NRC officials to address the specific issues raised in the OIA report. This review group, the Comanche Peak Report Review Group, issued its report on March 12, 1987, which reflected the following conclusions:

-- None of the draft findings that had been downgraded or deleted were significant in terms of any direct adverse impact on plant safety.

-- Region IV management acted appropriately in downgrading or deleting some of the inspectors' 34 draft findings; however, part of the problem could have resulted from the inspectors' failure to fully develop the issues of concern. Regional management should have provided the inspectors with guidance to properly focus and develop these items, rather than deleting them.

-- There were previous gaps in the Region IV Comanche Peak Quality Assurance Inspection Program in relation to 1986 requirements, but the current augmented review and inspection effort at that location compensated for those gaps.

-- The Form 766 data base was not used in making safety decisions, and its accuracy, completeness, and timeliness were not adequate for many needs.

-- Some factors that came to light in the OIA investigation and its aftermath might have implications for other facilities.

On April 9, 1987, Mulley appeared before the Senate Committee on Governmental Affairs and testified concerning the conduct of the Comanche Peak investigation (OIA Report 86-10). In his testimony, Mulley asserted the following:

-- He limited the scope of the Comanche Peak investigation because of pressure from EDO Victor Stello and OIA Director Sharon Connelly.

-- His draft of the OIA report was modified by Connelly as follows:

- She removed the conclusion that Region IV managers acted inappropriately to limit violations assessed and that Phillips was harassed and intimidated in an effort to get him to downgrade or delete his inspection findings.

- She focused the report on the technical issues underlying the violations, an area outside the expertise of OIA.

- She removed quotations of Region IV personnel that substantiated the conclusions stated above and demonstrated the lax enforcement attitudes of Region IV management.

-- The decision to distribute the OIA report would make it extremely difficult to get NRC employees to cooperate in ongoing investigations.

-- Phillips tried to inform the NRC that Region IV demonstrated an attitude of trying to help the utility obtain an operating license for Comanche Peak.

On October 8, 1987, the Senate Committee on Environment and Public Works, Subcommittee on Nuclear Regulation, held hearings at which Mulley again testified with reference to the Comanche Peak case. At that hearing Mulley stated the following:

-- All of the facts and information developed during the investigation were in the report.

-- He disagreed with the OIA Director, Sharon Connelly, about the way in which the report was prepared, particularly the overemphasis on technical issues, an area in which OIA lacked expertise.

-- He was more interested in the treatment of Phillips than he was about the technical validity of the inspection findings.

-- He believed that Phillips had been harassed by Region IV management.

-- The staff of EDO Victor Stello was qualified to address technical issues and decide the validity thereof.

-- He disagreed with some of the changes Connelly made; however, he did not think that anything was wrong, illegal, or "immoral" about what she did. The report was different from the way he would have written it. Stello wanted the report out because he wanted a document with which to work. In an effort to respond to the EDO, Mulley started to put it together quickly. He decided there were certain issues that, at the time, did not need to be included in the report. No one attempted to alter the content of the report.

GAO's Investigative Analysis

GAO determined that OIA's investigation of allegations that NRC managers in Region IV mishandled findings proposed by NRC Inspector Shannon Phillips was accurate; however, the investigative processes used by OIA were questionable.

In support of the proposition that Phillips' findings had been improperly altered or deleted, OIA Investigator Mulley relied, in part, on statements by a former Region IV manager that Region IV management had a lax enforcement attitude. When interviewed by GAO, however, this same individual said that the OIA investigator misunderstood his meaning and that the point he was trying to make was that there were philosophical differences about how well developed a finding must be before it should be cited as a violation. Region IV managers Westerman and Johnson insisted that violations be cited only after the findings were fully developed and supportable, whereas some inspectors and managers believed in citing violations and placing the burden of proof on the utility to disprove them.

In contrast to his testimony of April 9, 1987, at the Senate Committee on Governmental Affairs hearing, Mulley told GAO that it was only his "opinion" that Phillips had been harassed and intimidated and that it might not have been done intentionally. Mulley could provide no direct support for his contention that Phillips had suffered harassment or intimidation. By failing to interview other Region IV supervisors, Mulley unintentionally skewed the harassment question. GAO interviewed other NRC personnel who provided a balancing perspective on Phillips' allegations and the proper oversight function of regional officials. Phillips stated he was being harassed and intimidated by his supervisors because his findings were critical of the utility. However, Phillips' supervisors advised that this was not the case. They stated Phillips failed to fully develop his findings and/or present them clearly in writing.

GAO's review indicated that Mulley was correct in asserting OIA should not have focused its report on the technical issues. Even with technical assistance, OIA lacked the expertise to resolve such issues in a competent fashion. If OIA found a need to challenge the technical judgments of Region IV management, it should have employed NRC's established procedure for resolution of differing professional opinions.

Finally, GAO was unable to verify Mulley's assertions that (1) he had been pressured to limit the scope and otherwise expedite completion of his investigation of the Phillips matter and (2) his draft report had been substantially altered by Connelly. Mulley testified before the Senate Committee on Environment and Public Works that although he might have disagreed with some of the changes to his report, he did not think there was anything wrong with the changes made by the OIA Director. Furthermore, Stello denied that he had applied undue pressure on Mulley concerning the report. GAO reviewed all available drafts of Mulley's report and interviewed the principals involved in the preparation, editing, review, and approval process. No evidence was developed to indicate that substantive changes were made during the review and editing stages.

With regard to the distribution of Mulley's report, GAO found no basis to question the conduct of the EDO who explained that the Commission authorized the distribution to assist NRC management in addressing important matters, such as health and safety issues requiring immediate action. Witnesses told GAO they were disturbed about the distribution of the report containing unredacted transcripts of their statements to high-level management officials and to the principal witnesses. However, none of the witnesses interviewed asserted that they had been subjected to reprisals. Moreover, none of the witnesses identified in the OIA report or transcripts asked for or received a pledge of confidentiality from anyone in OIA, and Mulley voiced no objection to the release.

CASE 2: IMPROPER TVA DISCUSSION

Results in Brief

GAO's investigation revealed that OIA did not thoroughly investigate an alleged improper discussion between an NRC official and an official of the Tennessee Valley Authority concerning a major NRC enforcement initiative focused on TVA. OIA inadequately planned its investigation and failed to interview one of the two parties to the conversation. GAO learned that key OIA personnel did not know the purpose of their investigation of this matter.

Although the conversation was investigated by OIA, the NRC does not prohibit or discourage such conversations. A report of such contacts is now required by NRC regulations; however, none was required at the time of this incident.

Background

On December 19, 1985, a member of TVA's Nuclear Safety Review Staff (NSRS) briefed NRC Commissioner James Asselstine on the condition of the Watts Bar Plant. NSRS' position contrasted sharply with the TVA's prior certification to the NRC that the plant was ready for fuel loading. In the briefing, NSRS listed several technical areas in which they believed deficiencies existed, which indicated to them fundamental weaknesses in the Watts Bar quality assurance program.

NSRS' perception that the plant was not ready for fuel loading prompted the NRC to request that TVA officially certify its position on NSRS' technical concerns. By letter dated January 3, 1986, the NRC's Office of Nuclear Reactor Regulation (NRR) requested that TVA certify its position on whether or not the quality assurance program met the criteria outlined in 10 CFR Part 50, Appendix B. The NRC's letter allowed 6 days for a sworn response and 30 days for "information on an item-by-item basis supporting the TVA corporate position." The Director of NRR, Harold Denton, subsequently agreed to extend the 6-day deadline. The extension was made to allow the TVA adequate time to consult with staff and because the new head of TVA's nuclear program, Steve White, would not report for duty until January 13, 1986. On March 20, 1986, White responded to Denton of NRR with TVA's position and addressed each of the issues underlying the NSRS perception. After White signed the letter and transmitted it for hand delivery by a TVA official, he determined a need to clarify one section of the letter. White contacted the courier while he was en route and directed him to go by TVA's Washington, D.C., office where the change was incorporated. The letter was subsequently delivered to the NRC.

On April 7, 1986, Ben Hayes, Director of the NRC's Office of Investigations (OI), informed then-NRC Chairman Nunzio Palladino that NRC's Executive Director for Operations, Victor Stello, had been overheard discussing TVA's response to Denton's letter with Steve White on or about the time that the TVA response was dispatched. OI is responsible for NRC investigations involving allegations of intentional violations of regulations by licensees, permittees, applicants, contractors, and vendors. At the Chairman's request, Hayes passed this information to the NRC's Director of OIA, Sharon Connelly. Hayes informed her that the Stello-White conversation had been overheard by Denton and the NRC's Director of Inspection and Enforcement, James Taylor.

OIA Director Connelly decided to investigate the matter and assigned the case to Keith Logan, then OIA's Assistant Director for Investigations. Logan interviewed Hayes on April 11, 1986. The transcript of the Hayes interview reveals the following points:

— OI was investigating a possible material false statement made in February 1985 by TVA's former nuclear power program manager.

-- In the course of OI's false statement investigation, Denton was interviewed and advised that on or about March 20, 1986, while he, Taylor, and Stello were together in an NRC vehicle, Stello had a telephone conversation with White about the 10 CFR Part 50, Appendix B, matter.

-- Taylor, in a later discussion with Hayes, confirmed that the conversation had taken place and indicated that he was uncomfortable with the conversation.

-- On April 7, 1986, Hayes advised Chairman Palladino about the Stello-White conversation.

-- The Chairman indicated that he wanted Hayes to discuss the matter with Connelly of OIA.

-- Hayes informed Commissioner Asselstine about the Stello-White conversation in the event the issue came up in the Commissioner's forthcoming visit to TVA.

Following Logan's interview of Hayes, nothing more occurred in the OIA investigation until June 6, 1986. On that date, Asselstine asked Connelly about the status of the investigation during a briefing she was making to the Commission on unrelated OIA activities. In response, Connelly erroneously stated that the witnesses to the conversation had been interviewed and that Stello would be interviewed within the next two weeks. Four days later, Connelly corrected the record to show that neither witness had been interviewed, the case had been reassigned to Investigator Anthony Ward, and the first of the witnesses would be interviewed on June 10, 1986.

Ward interviewed Denton on June 10, Taylor on June 16, and Stello on July 30, 1986. On August 26, 1986, Ward telephoned an attorney in the NRC's Office of General Counsel, Sebastian Aloot, and synopsized the results of the four OIA interviews. Aloot stated that, based on the facts as presented, there was no apparent conflict of interest or impropriety on the part of Stello.

Two days later, George Mulley, who in June 1986 had been appointed OIA's Assistant Director for Investigations, signed OIA Report 86-30, and Connelly transmitted it to the Commission. The report did not indicate that other NRC officials had similarly discussed TVA's Appendix B response with White. The report concluded, "There was no information developed during this inquiry to substantiate any impropriety on the part of Stello during his telephone conversation with White." The report was correct in its conclusion; however, OIA's method of having reached such a determination was questionable since they failed to interview the second party of the alleged improper conversation.

On April 8, 1987, Mulley, in preparation for his testimony at the Senate Committee on Governmental Affairs hearings, wrote a memorandum explaining why the investigation took as long as it did to complete and why, in reviewing the draft report, he saw no reason to interview Steve White. Mulley's memorandum stated that he was not involved with this investigation during the April to July 1986 time frame because of his preoccupation with the Comanche Peak and other investigations. Accordingly, the memorandum indicated, Mulley could not explain why the Stello-White investigation had taken so long to complete. The memorandum reported that Mulley reviewed the Stello-White report and "noted no conflict regarding the topic of the telephone conversation; the only point in dispute seemed to be the propriety of...(Stello's) actions." The memorandum further stated that "(Mulley) did not discern a need to interview (White)...because he would have provided no new significant information regarding (Stello's)...actions."

GAO's Investigative Analysis

GAO investigated the Stello-White telephone conversation to determine the propriety of the interaction between the principals and to evaluate the thoroughness of OIA's investigation of the matter. On March 14, 1988, the NRC's Office of Investigations issued a report entitled Watts Bar Nuclear Plant: Possible Willful Attempt by TVA Management to Mislead the NRC. OI's report concluded that White knowingly and willfully made a material false statement in his March 20, 1986, certification letter to the NRC. Because it was beyond the scope of the request made of GAO, GAO did not evaluate the OI investigation or report. However, GAO did review transcripts of OI interviews that were relevant to White's March 20, 1986, conversations with Stello and Denton.

GAO concluded that OIA's investigation of the alleged improper conversation between Stello and White was not sufficiently thorough. OIA failed to determine what it was investigating, e.g., there was inadequate effort devoted to determining the nature of what was said and the impact that the conversation had on the actions of either party. Furthermore, OIA failed to pursue the investigation in a timely and systematic manner. The investigation should not have been initiated without a proposed plan of action and specification of the rule, law, or regulation that might have been violated. This was evidenced during GAO's interviews of Ward, Mulley, and Connelly since not one of them could provide a convincing justification for their failure to interview White about the alleged improper conversation.

During GAO's interview of White, he denied having sought or obtained improper pre-approval for TVA's position. White stated that the purpose of his calls to NRC officials was to assure that TVA's letter was fully responsive to the NRC's request. White asserted that it was his discussion with Denton, not with Stello, that led him to make a clarification in TVA's response. White made contemporaneous notes of his conversations, which he provided to GAO. These notes, which were part of White's ongoing diary for this period, add credence to his version of what transpired in his conversations with NRC officials.

When interviewed, Stello and Denton's account of the events coincided with White's version of what transpired in the telephone calls of March 20, 1986. White asserted that he was not trying to discern if TVA's position was acceptable, but to assure himself that the letter was fully responsive to the NRC's request for information. White told GAO that his change to the letter did not reflect a substantive change in TVA's position, but only served to clarify a detail that Denton considered important. GAO was not able to develop any information indicating that Stello, Denton, or other NRC officials coached White on what position TVA should adopt to assure favorable action by the NRC. GAO learned in its interviews of Denton and Taylor that their discomfort with the Stello-White conversation was only because they felt White was going around them in dealing with Stello.

An NRC regulation (10 CFR 0735.49a) prohibits employee actions that might result in, or create the appearance of, giving preferential treatment to any person or making a government decision outside official channels. Under NRC policy applicable to the time frame in question, GAO believes that this regulation did not prohibit the type of discussions that apparently took place in this case. Until recently, the NRC policy with reference to this regulatory provision was permissive, as evidenced by the commentary of Chairman Zech on July 10, 1987, — wherein he stated "so long as it is understood that any staff discussions do not constitute the staff's formal judgment on the merits of any issue." He further stated in his commentary, "The agency views preliminary discussions and informal preliminary staff opinions as important ways to better understanding on the part of all concerned of the issues surrounding a potential request for regulatory action."

Accordingly, GAO's investigation substantiated that the Stello-White conversation did not contravene relevant NRC regulations as applied at the time in question.

CASE 3: LEAK OF NRC DOCUMENTS

Results in Brief

GAO concluded that the NRC did not properly address the issue of whether a regulated utility had access to its internal documents. Commissioner Roberts' investigation of the matter was very limited, but none of the Commissioners seemed to have had an appreciation of that fact. A significant factor explaining why the matter was not properly addressed was the failure of the NRC to refer the matter to OIA at the outset as required by NRC guidelines.

Background

On June 8, 1983, James Joosten, a technical assistant to then-NRC Commissioner Victor Gilinsky, sent Richard DeYoung, an NRC official, documentation that he had received from a free-lance reporter regarding alleged safety problems with a nuclear power plant in Louisiana. DeYoung served as Director of the NRC's Office of Inspection and Enforcement. The memorandum transmitting the documentation called attention to the reporter's concerns about cracks in the concrete under the containment vessel at the Louisiana Power and Light Company's (LPL) Waterford III plant. The materials included published articles written by the reporter that raised questions about possible collusion between LPL and NRC inspectors. Joosten's memorandum suggested DeYoung assure that the reporter's concerns be reviewed objectively. Joosten sent copies of his memorandum and attachments to Steve Chestnutt, technical adviser to Commissioner Thomas M. Roberts, and to other NRC officials. Copies of the Joosten memorandum were publicly released by NRC three months later pursuant to a Freedom of Information Act request.

In March 1985, OI Investigator Bill Ward, while working on an unrelated case, discovered a copy of the Joosten memorandum and attachments in an LPL file at the Waterford plant. Attached to the material was a cover memorandum dated June 15, 1983, from George White, a vice president of Middle South Utilities, the holding company for LPL. The White memorandum was addressed to John Cordaro, an executive of the company, and read as follows:

"Attached is a memorandum which I have received from sources inside the Nuclear Regulatory Commission regarding Waterford Quality Assurance matters. This memo is for your information but I would hope that you limit its distribution to protect the source within the NRC."

On March 13, 1985, after conferring with his staff on what to do about the discovery, OI Director Ben Hayes took a copy of the documents to then-NRC Chairman Palladino. Following a discussion with his legal advisor on what actions the discovery warranted, Palladino decided to make Commissioner Roberts aware of the matter. Palladino did so because the copy Hayes provided appeared to have been duplicated from Roberts' office file copy.

After obtaining the documents from Palladino, Roberts assembled his staff and asked each member if he or she had leaked the documents. Roberts tape-recorded the staff interview. During the taped interview, none of Roberts' staff acknowledged having given the documents to George White. After the meeting, Roberts' staff established that the Joosten memorandum had been released to the public on September 23, 1983, pursuant to a Freedom of Information Act request.

On March 14, 1985, Palladino sent a memorandum to Ben Hayes informing him that NRC's Reorganization Plan No. 1 of 1980 made it the responsibility of the individual Commissioners to supervise personnel in their immediate offices and, therefore, the matter was Roberts' to deal with. On March 15, 1985, Hayes and Ward met with Roberts and his legal advisor, James M. Cutchin. At Roberts' request for all documents related to the matter, Hayes turned over to him copies of the White memorandum, along with two pages of handwritten notes that Hayes had made of his discussions with Palladino.

In his discussion with Hayes, Roberts made a remark that Hayes and Ward interpreted as an expression of concern that the matter might become an issue in Roberts' upcoming confirmation hearing. The matter did not arise in the June 18, 1985, confirmation hearing; however, it surfaced just prior to the Senate Committee on Governmental Affairs hearing on April 9, 1987.

On March 30, 1987, White prepared an affidavit for the Senate Committee on Governmental Affairs staff. In it he stated the following under oath:

-- The June 15, 1983, memorandum attached to the Joosten material and bearing what appears to be his signature, was, in fact, dictated from Washington D.C., signed by his secretary, Peggy Balsamo, in New Orleans, and was not the type of memorandum he was accustomed to sending or receiving.

-- He had no recollection of preparing or dictating the memorandum or receiving the attachments thereto.

-- He did not recall ever having had possession of internal NRC documents or information regarding Waterford nuclear plants that would not have been provided or left for Middle South Utilities, or made available for the public in the normal course of business.

-- He did not recall ever having had a source or having heard of a source for internal NRC documents or information within the NRC, and he did not consider anyone then or formerly employed by the NRC to be a source for such documents or information.

At the April 9, 1987, hearing, Senator John Glenn, the Committee Chairman, questioned Roberts about his investigation of how White obtained the Joosten materials. Roberts testified that he had not questioned White about the matter but satisfied himself that no one in his office had leaked the documents. Roberts said he met with the other Commissioners and informed each of them that he was terminating his investigation without having determined the source of the leak. At the hearing, Roberts testified he destroyed all copies of the documents that Palladino and Hayes had given him. Roberts explained he did this because he was "somewhat paranoid" and thought someone might be out to get him. A day after the hearing, Roberts notified Senator Glenn that he had located the documents he had previously testified to having destroyed. Senator Glenn subsequently referred the matter to the Department of Justice for consideration of possible criminal prosecution.

On April 14, 1987, an NRC management meeting was held in which the Office of General Counsel was requested to review the policies and procedures for handling allegations involving the Commissioners and their offices. The General Counsel replied that OIA had authority to investigate such matters, subject to the judgment of the Commission.

During testimony before the Senate Committee on Environment and Public Works in October 1987, OIA Director Sharon Connelly was asked if, in cases of alleged wrongdoing by the Commissioners or their staffs, she thought the NRC should determine whether to refer the matter to OIA or not. Connelly responded that she thought the Commission had determined that all such allegations were to be referred to OIA and, if not, to the FBI.

GAO's Investigative Analysis

Without determining how NRC documents came into the possession of Middle South Utilities, GAO has been unable to ascertain whether any federal law or NRC regulation was violated.

In his affidavit to the Senate Committee on Governmental Affairs, White did not deny dictating the June 15, 1983, memorandum that transmitted the material to LPL. GAO interviewed White on January 29, 1988. In this interview, White "seemed to recall" that he had dictated the memorandum and stated that he employed words in it containing a certain amount of "puffery" designed to impress his superiors. White stated that in retrospect, had he seen how the words looked on paper, he might not have signed the memorandum. White told GAO that he did not remember where or from whom he obtained the documents, except to say that it was not from a source or sources within the NRC. Additionally, White advised GAO that no official of LPL or Middle South Utilities who was an addressee of his "confidential" memorandum acknowledged having received the materials.

GAO's investigation verified that no LPL or Middle South Utilities official brought to the attention of the NRC an employee's assertion of the existence of a "mole" within the NRC. White's memorandum, no matter how self-serving, demonstrated that a regulated utility secured unauthorized access to NRC documents. The ability to obtain such materials could impact on the NRC's enforcement program, licensing functions, and regulatory procedures.

GAO determined that Roberts did not concern himself with the question of how White obtained the NRC documents, but only addressed the issue of whether someone on his personal staff might have been the utility's avenue of access. In this instance, Roberts dismissed the leak implication by simply asking his small staff if any of them provided the documents to the utility. By doing this, Roberts ignored the potential of a broader problem in that a utility official claimed to have a "source" within the NRC.

Chairman Palladino's referral of the matter to Roberts for handling did not oblige Roberts to adhere to relevant investigative standards. Palladino, like Roberts and the other Commissioners, apparently believed that the referral and disposition of this matter was an exclusive delegation of investigatory authority and discretion. An April 16, 1987, opinion from the NRC's General Counsel appropriately points out the error in this assumption by distinguishing between the functions of supervision and investigation.

Prior to the April 1987 Senate hearings, Roberts learned that his handling of this matter would be subjected to scrutiny. On the day prior to his testimony, Roberts met with a former NRC General Counsel. In this meeting, Roberts advised the former NRC official that he knew this issue would surface at the April 9, 1987, hearing.

The less-than-professional handling of the matter by the NRC, combined with Roberts' cursory investigative effort, might well have jeopardized any possibility for determining where or how White obtained the NRC documents. When the issue first surfaced in 1985, a properly conducted investigation, including an interview of White, might have provided NRC with the identity of "the source within the NRC."

GAO'S INVESTIGATIVE OVERVIEW

GAO was advised by the requestors to expand the scope of its work as necessary to cover unforseen but related matters that might develop. During the course of its investigation, GAO noted apparent problems with the NRC's investigative capability.

The NRC and the U.S. Department of Justice (DOJ) have failed to execute a Memorandum of Understanding governing the referral of possible criminal violations stemming from questionable actions of nuclear licensees. Critics have cited such cases as the D.C. Cook, Three Mile Island, and Fermi cases as examples of the NRC being too cozy with the industry it is charged with regulating. In each of these cases, allegations surfaced that NRC officials engaged in actions that adversely affected the potential criminal prosecution of the concerned utility.

The Senate Committee on Governmental Affairs hearings revealed deficiencies in the NRC's investigative programs and led the Committee to report, "OIA lacks authority, competence and independence." GAO's analysis of the Comanche Peak matter suggests that a supervisor-employee conflict was elevated to the highest levels of the NRC. The matter was raised to such levels because OIA failed to provide NRC management with a proper perspective on the matter under investigation. In another instance, OIA failed to understand the basic issue that they were investigating, thus they were unable to properly serve the needs of the agency. GAO conducted a review of several closed OIA investigative case files. This review found that OIA routinely initiates investigations without first establishing a threshold for acceptance. When interviewed by GAO, Connelly acknowledged this to be true. Additionally, GAO's review of OIA records from 1984 to the present reflects that OIA has not successfully presented a case for criminal prosecution.

NRC management is faced with a problem in which its two primary investigative organizations, OIA and OI, demonstrate a mutual lack of trust, respect, and cooperation. This is evidenced by the OI Director's involvement with the matters GAO reviewed. The OI Director advised that when he learned of the alleged improper conversation between the EDO and a utility official, he did not make a direct referral to OIA, but instead took the information to the Chairman. In the leak of the "sensitive" document matter, the OI Director stated he brought the information to the Chairman, not to OIA, because it concerned a Commissioner. Appropriately handled, both matters should have been referred to OIA for evaluation of wrongdoing. OIA Director Connelly's statement that she is suspicious of the nature of any investigative referral that she receives from OI further demonstrates the lack of cooperation between the two NRC investigative offices.

These three issues suggest a need for the NRC to evaluate its investigative capability. The NRC should assure that its investigators conduct their work in a competent manner using professional standards. Accurate, complete investigative findings are often of major importance to NRC management and the Department of Justice. When investigations focus on criminal matters, the NRC must assure that evidence is properly gathered, safeguarded, and referred to the Department of Justice. The NRC should continue to support the Justice Department throughout the investigative and adjudicatory period. The NRC should assure that its two investigative offices work together with a high level of coordination and cooperation. Their respective missions complement one another and often overlap considerably. This fact requires strong close professional relations. Lastly, the NRC should develop and enforce a strong, clear policy directing the manner in which investigations are initiated, conducted, and referred for judicial or management action that will assure independence and professionalism.

The important mission and critical safety role of the NRC require that it possess a first-rate investigative capability with resources that will assure the NRC's ability to perform its function in a professional, competent manner.

(600028)

May 26, 1988 - Breaux Report

Nuclear Regulation Reorganization and Reform Act of 1988

Report of the Committee on Environment and Public Works, US Senate

Appendix 1, Internal Agency Investigations

A. Based upon the investigation conducted by the Subcommittee, including the facts set forth in this Part, the Subcommittee has reached the following conclusions:

1. The Subcommittee found no evidence to indicate that the telephone conversation between Victor Stello, Jr., and Steve White of March 20, 1986 involved any improper effort by Stello to coach White through the preparation and submission of TVA's response to the Commission's letter of January 3, 1986.

Klett Col.

Calendar No. 301

100TH CONGRESS
1st Session

SENATE

REPORT
100-150

INSPECTOR GENERAL ACT AMENDMENTS OF 1987

REPORT

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

together with

ADDITIONAL VIEWS

TO ACCOMPANY

S. 908

TO AMEND THE INSPECTOR GENERAL ACT OF 1978

AUGUST 7 (legislative day, AUGUST 5), 1987.—Ordered to be printed

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advice to White that crossed the line of propriety, considering the entire TVA problem.

The Committee finds that OIA's investigation of Stello failed to gather all of the relevant facts. In presenting this case study, the Committee does not attempt to draw any conclusions about whether Stello engaged in improper conduct.

Case Study No. 3: *OIA's Lack of Objectivity and Independence*

In 1986 NRC inspectors in Region IV (Dallas) accused their superiors of harassing and intimidating them for reporting safety problems at the Comanche Peak nuclear power plant. This troubled plant has been under construction for 14 years. The Comanche Peak case provides an inside view of a general lack of regulatory zeal on the part of the NRC's Region IV management, and OIA's lack of objectivity and independence in reporting on this problem.

Between 1984 and 1986, NRC inspectors from Region IV conducted inspections and audits of the possible extent of quality assurance and quality control breakdowns, and related engineering and technical deficiencies at Comanche Peak. The problems the inspectors found were significant and potentially affected the safety and licensability of the plant, as well as the health and safety of the public living in central Texas.

The inspectors cited their negative findings in draft inspection reports, and categorized them as violations of NRC regulations, deviations from commitments, or unresolved items. Beginning in the fall of 1985, the Chief of Region IV's Comanche Peak Task Group and the Division Director began vigorously to challenge inspection findings, and in some cases suggest that they be removed or downgraded to a less serious category. When inspectors did not agree to remove or downgrade the findings, certain senior managers subjected the inspectors to harassment and intimidation. Some of the inspectors gave into the pressure to change their findings. Testimony received by the Committee indicates that the basis for the intimidating conduct was Region IV management's concern that negative inspection findings might reflect unfavorably on the utility's performance and reduce its chances of getting a license.

On one occasion, the Region issued a report of a major inspection without including several of the violations cited in the draft report. The Region issued the report to the public using the draft inspectors' signature sheet as part of the final report. One of the inspectors, Shannon Phillips, testified at the Committee's April 9th hearing that, when he learned of this incident, he knew he had to report the matter and his overall concerns to someone independent of Region IV management. He was aware of OIA's reputation of being unable or unwilling to investigate this type of serious management issue. Therefore, Phillips raised his concerns with Commissioner Asselstine in March 1986, and other Region IV inspectors apparently did the same.

The inspectors' allegations were referred to OIA's Assistant Director for Investigations, George Mulley, the senior OIA investigator in whom Phillips had expressed confidence due to Mulley's personal reputation for professionalism. Asselstine required that transcripts be kept of OIA's interviews with all witnesses. Mulley's field work lasted five months (April–July 1986), and involved interviews with numerous inspectors, consultants, and eventually

ITEM H

Investigative Referral Board

Allegation

Five months after the establishment of the IRB, there were eight referrals for investigation. In a comparable five month period a year earlier, there were 42. Commissioner Asselstine stated that the IRB appears to be a thinly veiled attempt to control OI by controlling what referrals are made, and thus what OI investigates.

Response

In January 1986, the Commission approved the guidelines and standards to be used by the staff in defining wrongdoing and for establishing a priority for conducting investigations. Subsequently, the IRB was established, with Commission approval (copy attached), in November 1986, on a trial basis. The focus of the IRB effort was guided by a written charter designed to elevate matters of wrongdoing to OI headquarters to establish priorities nationwide. Historically, referrals for either inquiries or investigations were made by the individual regional offices and a backlog was being encountered. As noted by the IRB in its May 21, 1987 report (copy attached) relative to the backlog of pending cases:

> One of the principal accomplishments of the IRB was the development of a national priority for pending OI cases.

Another significant result of the IRB efforts was the uniformity achieved in applying the Commission's guidelines for investigation referrals. Historically, referrals to OI included requests for assistance or inquiries, as well as referrals for investigations. The involvement of all Regions and senior managers from the Offices of NRR, NMSS, EDO, IE and OGC provided a consistent national or agency-wide perspective. OI was invited to participate in the process and was provided copies of all the material.

After the April 9, 1987 hearing, Senator Glenn offered me the opportunity to provide a written response to a number of issues raised by witnesses who testified at that time. In my letter dated April 28, 1987 (copy attached) I stated that:

> The Investigative Referral Board (IRB) was established not to control OI but as a management tool to assure that matters referred to OI for investigation met the dual threshold test established by the Commission of (1) a reasonable basis to believe that wrongdoing occurred, i.e., the violation at issue appears more likely to have been intentional or to have resulted from careless disregard or reckless indifference than from error or oversight, and (2) there is a regulatory need for an investigation.
>
> Another important function of the IRB was to establish a national priority of cases for OI investigation based on regulatory significance and need...it was important to establish a national priority listing to assure that the agency's investigatory resources were being focused on the most important safety issues.
>
> In making its recommendations the IRB considers the various perspectives and views of senior managers in the Offices of NRR, NMSS, EDO, IE, and OGC. OI was invited to participate in the IRB deliberations because they would offer insight on wrongdoing issues and perspectives on what matters need to be

investigated. However, while they were given notice of meetings, OI chose not to participate in IRB activities. Nevertheless, OI is given a copy of each case that the IRB considers as well as a copy of the decision of the IRB. This preserves OI's option to self-initiate an investigation if it believes one is appropriate.

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

May 21, 1987

MEMORANDUM FOR: Victor Stello, Jr.
Executive Director for Operations

FROM: Richard W. Starostecki, Chairman
Investigation Referral Board

SUBJECT: INVESTIGATION REFERRAL BOARD

The Investigation Referral Board (IRB) was established as an integrated senior management review board to examine proposed requests for investigation. The purpose of the review is to assure priorities and needs for investigations are commensurate with the agency mission regarding protection of public health and safety. The IRB was composed of senior agency officials representing the three program offices [Office of Nuclear Reactor Regulation (NRR), Office of Nuclear Material Safety and Safeguards (NMSS), and Office of Inspection and Enforcement (IE)], the Director, Regional Operations and Generic Requirements Staff and the Assistant General Counsel for Enforcement, OGC. Since establishment on November 10, 1986, 24 proposed requests were forwarded to the IRB by the five Regional Administrators. In conducting reviews and prioritizing these cases the IRB used the previously issued, Commission-approved, guidelines which defined the threshold and prioritization scheme for identifying matters warranting investigation. Within two weeks of receipt, each referral was considered by the IRB in consultation with the requesting region. The resulting IRB recommendations were promptly provided in writing to the requesting region for consideration prior to a referral of a case to the Office of Investigation (OI).

As of the end of April 1987, there were four emergency referrals provided directly to OI in accordance with the IRB charter and which were not reviewed in-advance by the IRB. In addition 11 of the 24 referrals submitted to the IRB were subsequently forwarded by the Regional Administrators to OI. The remaining 13 were recommended to the Regional Administrator by the IRB to be deferred (12 cases) or denied (1 case). Reasons for these deferrals and one denial were that upon careful scrutiny of the available information there was no violation of agency regulations, there was insufficient information to understand whether or not there was a technical issue affecting safety, the staff and OI were actively developing additional information to establish whether the matter warranted a referral for investigation, or there was not a reasonable basis that wrongdoing may have occurred.

During the trial period, the IRB, in consultation with the regions, reassessed the backlog of pending OI cases. As a result of this reassessment a national priority ranking of pending cases was developed. Preparation for this effort and the actual reassessment was resource intensive for senior managers in the regions and on the IRB due to the time commitments. However, the collegial process of the IRB resulted in identification of issues warranting further resolution and highlighted the need for closer coordination among regions and between the regions and the program offices. The process clarified the threshold to be used in identifying potential wrongdoing matters and provided the involved regional management a more uniform and consistent understanding of how the guidelines should be applied to future cases.

Comparison of referral statistics before inception of the IRB and during the trial period does not show significant changes in the rate of cases the regional offices identified as potential referrals for investigation. Therefore, the question is raised as to the role of the IRB and whether it should be continued or terminated. To address this question a brief discussion is warranted as to the accomplishments of the IRB and the role of such a review board in the future.

One of the principal accomplishments of the IRB was the development of a national priority for pending OI cases. During this effort, the interaction among the regions, program offices and the IRB resulted in some cases being dropped, some lowered in priority and others raised. Many of the older cases also were reassessed since documentation to allow comparison with current guidelines and standards had to be developed in order to properly assign them a priority. As a result a better understanding was developed by the regions as to overall agency needs and the impact that individual case needs, priorities and schedules have on the national ranking. Therefore, this ranking should be of assistance to OI in balancing its resources to match the needs of the agency on a national level rather than within each region. There is greater assurance that more significant issues will receive appropriate priority since it reflects the consensus views of the staff.

Another accomplishment of the IRB was the identification of specific difficulties impeding the timely and effective identification of technical matters affecting safety (i.e., regulatory need) that warranted remedial measures. In some instances there has not been a close working relationship between OI and the staff in all elements of the organization. Consequently, there is a perception that inspections and investigations are mutually exclusive and that the conduct of one will impede the other. As a result of IRB discussions with the regions, the need for closer working relationships was identified. The specific need for prompt OI assistance to the staff on certain inspections exists and guidance needs to be developed for the OI field offices. Similarly, more timely feedback from OI inquiries and investigations will enable the staff to make the appropriate regulatory decision for corrective actions. In some cases, delays on the order of 1-3 years render certain issues moot. Management involvement from both OI, the regions and the program offices is needed to resolve the perceptions that arise from a strict delineation between investigations and inspections. This has at times resulted in some friction between the staff and OI.

Historically, the staff has referred a variety of cases to OI. It is of interest that about 30% of these were treated as investigations by OI and the majority were handled as inquiries. Some of this may have been due to regional requests for inquiries rather than investigations. The issuance of the Commission-approved guidelines in January 1986 focused the staff more on the need for investigation referrals and, as a result, the need for OI assistance to the staff was not specifically addressed. Regions have relied on OI for assistance to help develop a matter, either through assistance to inspections or through an inquiry. In contrast, the IRB focused on requests for OI investigation. Comparison of the number of IRB-reviewed investigation referrals with the historical number of OI investigations shows that there is a continuing, if not increasing, need for OI investigative support. The staff has the mandate to identify and resolve technical issues affecting safety, as well as to identify potential wrongdoing matters; concurrently, OI has the mandate to pursue the wrongdoing issue. A management perspective from both a headquarters as well as a regional view, as to the regulatory need and basis for wrongdoing, is essential in resolving the competing interests for either an inspection or an investigation. In this regard I do not believe that within the staff there is a wide knowledge of or uniform understanding of the Commission-approved guidelines. Modifying the referral form to require an identification of the specific, applicable guideline being applied in each case should help. In addition, training in this area could be of assistance in establishing uniformity. Similarly, periodic reassessments of the pending OI cases will further improve the staff's understanding and application of the guidelines.

Comments solicited near the end of the trial period from the Program Office Directors, Regional Administrators, the Director, Office of Special Projects, and OGC, are generally supportive of the need for some type of an IRB. There were two commenters who suggested that the IRB either was not needed or it should have a passive oversight role.

The attached report and its enclosures more fully discuss the above matters. In summary, I believe that the IRB review process was timely and effective in identifying those issues warranting investigation as well as clearly stating a substantiated regulatory need. In my view, little delay, if any, to initiating investigations resulted from IRB review. Also, such delay appears insignificant when compared to the backlog of pending OI cases. In conclusion, the IRB performed in an advisory capacity to the Regional Administrators and Program Office Directors. In practice the IRB has probed the rationale and technical underpinning for each investigation referral request. This may have resulted in the perception that the IRB is accountable for the assigned responsibilities regarding matters referred for investigation, the reasons for the referral and the requested priority, as set forth in the EDO's directive of July 5, 1985. In determining whether or not the IRB should be continued, or the IRB charter modified, the accountability question has to be clarified. Benefits have derived from the six month trial period of the IRB; improved participation on the part of regional and headquarters managers in the referral process for OI investigations, as recommended in the IRB report, would result in a reduced need for the IRB in its present configuration.

Richard W. Starostecki, Chairman
Investigation Referral Board

INVESTIGATION REFERRAL BOARD

Review of Six Month Trial Period

The Investigation Referral Board (IRB) was established on November 10, 1986 (by a memorandum dated October 20, 1986) for a 6-month trial period. The IRB charter essentially required that two activities be performed: (1) review each referral that NRC personnel in the regions or at headquarters proposed to send to OI and (2) review on a quarterly basis the status of pending investigations. In regard to the first activity, the IRB attempted to focus discussions regarding referrals to:

(1) ensure there is a regulatory need for the investigation;

(2) determine if there is a reasonable basis for belief of potential wrongdoing;

(3) relate the referral to other referrals to OI and to agencywide priorities;

(4) ensure the suggested priority is consistent with program and overall agency needs; and

(5) review the schedule to ensure that the results would be consistent with the regulatory need.

These points are important because they constitute the test used by the IRB to ensure that the Commission's minimum guidelines were met. On January 10, 1986 the Secretary issued a staff requirements memorandum (SRM) providing a definition of wrongdoing as approved by the Commission, and establishing priorities for conducting investigations. The appendix to the SRM: (1) established the definitions to be used in determining whether there was a reasonable basis to conclude that wrongdoing may have occurred and (2) provided standards (in the form of examples) that should be used to establish a priority. Because these guidelines were in place long before the IRB was established, and the NRC staff should have understood and relied on them, it was viewed as essential that the IRB rely on them as well. During the course of the IRB deliberations it became clear that not all the staff were aware of the guidelines nor did staff members all understand them in the same way. The IRB charter and the guidelines as approved by the Commission are attached as Enclosures 1 and 2, respectively. To comply with the charter to review a referral within two weeks of its receipt, IRB met (notified in advance by written notices) the first and third Tuesdays of each month; regional personnel participated by telephone as necessary. OI personnel, both headquarters and field, were invited both orally and by memorandum to attend all IRB meetings. At a meeting between the IRB members and the Director of OI to discuss OI staff attendance and participation at IRB meetings, the IRB members unanimously stated to the Director of OI that OI staff should be encouraged to attend so that IRB could benefit from their unique insights on wrongdoing and their perspectives on activities that warranted investigation.

IRB membership during the trial period generally consisted of the Deputy Director of IE as the Chairman, SES representatives from OGC and the EDO office, a Division Director from NRR, and the Deputy Director from NMSS. Because of conflicts and subsequent reassignment within the agency, the Deputy Director of NRR proposed, and the IRB Chairman agreed to, the participation by a senior NRR Division Director.

The IRB established a system to obtain and review referrals. The requesting office or region sent a copy of each request to every IRB member and to both the OI field office and OI:HQ. The request was reviewed at the next scheduled meeting and a recommendation made at the conclusion of the discussion allowed the region that was involved to respond promptly (by telephone). The IRB served in an advisory role. In reaching its collective decision, the IRB probed the technical basis for the request, seeking to understand, for example, the safety significance of the matter. A written memorandum to the Regional Administrator recorded and confirmed the recommendation made on the telephone. Except for two referrals (one dealing with TVA and the other from the recently established NRC Office of Special Projects), all IRB referrals came from the regions; consequently, this report addresses the role of the IRB and its interaction with the regions.

Investigations that had been initiated before the IRB was established were reviewed on two occasions in order to establish a national priority listing. After the first meeting (mid-December 1986) to review the pending investigations, it became clear that in many cases priority could not be determined without additional documentation. Thus, IRB's first quarterly report dealing with pending investigations focused only on high priority cases. It also became clear that (1) the Commission's guidelines for ascertaining threshold and priority of investigations had not been uniformly applied and (2) referrals made before January 1986 did not reflect Commission guidance in all cases. As a result, the regions were asked to verify information or provide new information, consistent with the Commission's guidelines.

A meeting to review all pending cases was held in Bethesda, Md. on March 17 and 18, 1987. Each region participated by sending at least one SES manager. One Regional Administrator, three Division Directors, and one Deputy Division Director attended. Because of the wide participation and differing perspectives brought to the meeting, the meeting was productive and pending cases were assigned a national priority. How the Commission's guidance should be applied was a major topic. For example, the IRB told the regions that the phrase "safety concern for licensing" was to be viewed broadly in a regulatory oversight sense and not to be limited to the processing of licensing applications. The resulting prioritization was formally provided to the EDO, OI, Regional Administrators, and Program Office Directors on March 20, 1987 (see Enclosure 3).

To assess the activities of the IRB during the six-month trial period, several listings were developed. Enclosure 4 tabulates all nonemergency referrals submitted through April 29, 1987 for IRB review and indicates the disposition of each referral. As can be seen, 24 requests were submitted to the IRB and 11 of these were recommended for referral to OI. The remaining 13 referrals were deferred or denied because IRB found that: (1) based upon information provided by the region, there was no reasonable basis to believe that wrongdoing occurred, (2) investigations were not necessary to permit appropriate regulatory action, or (3) because OI support to the staff was in progress, a referral was not necessary. These statistics indicate that the IRB agreed with the region on about one-half of the referrals. The 1 denial and the 12 deferrals are discussed in Enclosure 7 to highlight the nature of these cases. The insights developed from these cases and from the information developed during IRB deliberations provide a basis for making a recommendation about the future of the IRB. Although the referring region or program office was free to elevate a dispute or disagree with the IRB recommendation, the option was not exercised during the 6-month trial period.

There were five emergency referrals during the IRB trial period (four came from Regional Administrators and one from a Program Office Director). After one emergency referral was submitted and the IRB Chairman had been notified, the referral was retracted. The reason for this retraction highlights one of the concerns of the IRB: the relationship between allegations and investigations and the responsibility of the region to determine whether a reasonable basis exists for viewing the allegation as valid and as a subject for referral. This specific retraction involved an unsigned note sent to the region regarding the conduct of licensed operators. Since current OI field practice is to request that the region submit an investigation referral to obtain OI assistance, the region did not readily have available OI assistance to conduct preliminary interviews. To resolve the matter promptly required the involvement of the OI Director and the Deputy EDO. An OI investigator accompanied regional staff to assess the credibility of the anonymous tip that constituted the allegation.

In order to assess whether or not the IRB process had a dramatic effect on regional referrals to OI, the staff compared the referrals from the regions before and after the IRB was established. Before the IRB existed, the regions submitted requests for either investigations or inquiries directly to OI. The specific form to be used for investigation referrals to OI was developed and promulgated by the EDO in the summer of 1985. Consequently, records for referrals to OI and the bases for them before the summer of 1985 are not necessarily complete or readily available. Using regional records, referrals were tabulated by date and by month, by region, from September 1985 to November 1986, a 14-1/2-month period that preceded the existence of the IRB (see Enclosure 5). As discussed in Enclosure 5, there are wide variations in the number and rate of referrals within and among regions. Although there is one anomaly resulting from the large number of referrals attributed to TVA cases, the rate at which the regions identified cases (either inquiries or investigations) before the IRB existed is comparable to the rate at which the regions sent cases to the IRB. Considered annually, 72 cases per year (or 57 per year excluding TVA data) were identified pre-IRB and 60 cases per year were identified since the IRB was formed. A record anomaly is discussed in Enclosure 5; taking that one into account would show that the IRB had considered about 40 cases on an annual basis. Although the comparison of 14-1/2 months of data previous to the existence of the IRB to 6 months of data since the IRB existed does not readily demonstrate a dramatic reduction in caseload, the examination of the data raises other questions: the impact of TVA issues, the issue of inquiries vs. investigations, and emergency referrals.

TVA Impact

Before the IRB was set up, 19 of 31 cases in Region II dealt with TVA. Since IRB was formed, there have been three cases regarding TVA. IRB considered one case from the region in December 1986 and deferred it for reasons discussed in Enclosure 7. There was an emergency referral from the program office director in January 1987. A third case involving TVA was referred in April 1987 by the recently constituted Office of Special Projects in coordination with the field staff; it was recommended for deferral. The IRB notes that during the 6-month trial period there were three potential referrals in regard to TVA from three distinct organizations: the Program Office submitted an emergency referral directly to OI and approved by the EDO. When TVA referrals are excluded, the Region II statistics are comparable to those of the other regions. Notwithstanding the importance of the TVA cases, the two deferrals recommended by the IRB and the attendant recommendations were adopted by the referring region/office. In one case there was no evidence of wrongdoing and the second is still being pursued.

Inquiries vs. Investigations and Timeliness

OI reports deal with either inquiries or investigations. On the basis of historical records, OI appears to use inquiries to ascertain whether or not potential wrongdoing exists and whether further followup is warranted. It has been OI practice to allow OI field offices to directly issue reports of inquiry. Investigation reports are formal, fully documented issues which require OI headquarters review and issuance.

During the 14-1/2-month period that preceded the IRB, the regions had made 87 referrals to OI. Examination of the records shows that OI initiated investigations in 25 cases, and initiated 55 inquiries, and denied 7 referrals (see Enclosure 5). These statistics indicate that OI conducted investigations in less than 30% of the cases referred to OI before the IRB was established. Concurrently, the backlog of pending cases was growing. Absent a review for priority, regulatory need or safety significance, OI has to make judgments about where to spend their resources: to pursue inquiries or to conduct investigations. For example, on March 13, 1987, one OI field office closed 15 cases. The average case was 30 months old, and the oldest case had a referral date of August 1982 (Enclosure 6). Consequently, when the concern is deferred pending the receipt of OI results, any regulatory action contemplated by the staff is affected since the passage of time may render the issue moot. In summary, based on the 14-1/2 month period that preceded the IRB, OI conducted the equivalent of about 21 investigations per year. Assuming that all cases forwarded to OI since the formation of the IRB results in OI investigations, OI should conduct the equivalent of about 31 investigations per year (refer to Enclosure 5.)

Emergency Referrals

In accordance with the IRB charter, emergency referrals could be made directly to OI by either a Regional Administrator or an Office Director, through established channels, bypassing the IRB. The IRB Chairman was promptly advised of these referrals. In this manner the IRB was kept informed as to the nature of the emergency event and the rationale for the referral. This process was used four times (three by Regional Administrators and one by a Program Office Director) during the trial period. The safety significance of the issue was used as the principal factor in making an emergency referral. Therefore, 4 of the 15 cases referred to OI were of such significance that they warranted the label "emergency referral."

Denials/Deferrals

As noted previously, the rate at which the regions identify cases is comparable to that experienced historically during the 14 1/2 months before IRB existed. However, as a result of the IRB review, 13 cases were recommended for either denial or deferral. IRB adopted the term "deferral" to identify those cases that could be resubmitted if further staff effort identified information that could be used for assessing the appropriateness of a request consistent with the Commission's guidelines. That is, IRB reviews involved discussions with the initiating regional office about the basis for the referral; at times, gaps in information were identified so that there was no reasonable basis to conclude wrongdoing occurred. If sufficient facts existed to clearly demonstrate no regulatory need, then a case could be subject to a recommended denial. In any event, any case recommended by IRB for either denial or deferral could be appealed and be resubmitted. None have been appealed. Furthermore, cases that the regions proposed for IRB review were available to OI before IRB review. Thus, OI had the flexibility to initiate a case if OI did not concur with the IRB recommendation. IRB draft procedures provided to the regions requested that written referral requests be concurrently provided to a standardized distribution which included OI.

OI Assistance

In the course of IRB deliberations, the development of factual information during an inspection was raised as an issue in those cases where there was potential wrongdoing. In numerous cases the regional staff expressed its perception that staff is expected to stop the inspection pending notification of OI. The IRB told the staff that it would be expected to develop the facts necessary to establish a reasonable basis and not to rely solely on suspicion or an anonymous allegation. Coincidentally, the OI investigation staff has an interest in preserving the facts associated with wrongdoing. There are occasions where prompt joint region/OI efforts are needed on a short-term basis (a few days) to assess whether or not a regulatory safety problem exists and whether an OI referral is needed or appropriate. The IRB told the regions that neither IRB nor OI referral was needed for the OI to assist staff in support of an inspection to develop the facts surrounding a particular case. A formal OI referral request to the IRB would delay any action needed to promptly identify an issue (e.g., interview of a licensee employee) and therefore was not viewed by the IRB as necessary. The IRB stated that it should review the case once the information is obtained to provide a reasonable basis that further investigative effort is warranted. Timely assistance from OI may be crucial in developing the facts surrounding a case; the regions should not be encumbered by the existance of the IRB to obtain support from OI in such circumstances. Assistance from OI field offices should be coordinated between the regional staff and the OI staff. On the basis of feedback from regional managers, OI field offices need guidance as to how such requests should be handled so as not to delay the process and concurrently to effectively manage OI resource commitments. In January 1987, the OI Director and the IRB Chairman agreed about the desirability of such an approach; however, the IRB is not aware of any guidance to OI field offices supporting this approach nor did OI offer an alternative response to a written proposal regarding OI assistance sent by the IRB in February 1987. The staff's role is to identify and ensure appropriate resolution of technical safety issues; once a safety problem is known to exist the staff cannot condone its continued existence. Enforcement, management meetings, or written reports are used to identify issues for the purpose of seeking corrective action. The need for OI information is not less significant in those instances of potential wrongdoing. There is a need to recognize those cases in which close cooperation is needed to satisfy both needs. Historically, prior to the promulgation of the Commission's minimum guidelines for investigation in January 1986, the regions occasionally used the referral process to request OI inquiries as a convenient form for soliciting OI assistance. As discussed previously, this factor has affected the statistics of referrals for OI investigations since the referrals included requests for assistance and or inquiry.

Recommendations

After five months of experience, the IRB had prepared proposed recommendations (see Enclosure 8) and solicited comment from all of the Regional Administrators, Program Office Directors, OGC, and the Director of Special Projects. These comments and overview of them for the purpose of identifying a common theme(s), if any, are enclosed (Enclosure 9). In general, the comments from the Regional Administrators are favorable and supportive about the results achieved by the IRB. However, the Director, Office of Special Projects, does not beleve that IRB should continue. Similarly, the Administrator, Region II does not believe that each request should be reviewed by the IRB in advance of referral to OI. The proposed recommendations were modified and, based on its experiences, the IRB makes the following recommendations:

(1) OI and the NRC staff should be encouraged to coordinate their activities at all levels. It is the view of the IRB that the activities of the IRB would have been expedited and enhanced by the participation of OI staff. Closer working relationships should be fostered so that the agency's objectives are attained with a clear understanding by OI and the staff of their respective roles. Matters identified as potential wrongdoing need to be followed or pursued far enough by the staff to adequately address technical safety concerns. The distinction between "wrongdoing" and "technical safety concerns" will not always be clearly identified, nor in some cases can it be. Consequently, the respective staffs must work together until the regulatory and wrongdoing issues are clearly established.

(2) NRC staff inspections can sometimes benefit from the participation by OI staff. Such assistance from OI is generally needed on short notice and is not conducive to review by a board. There is a need to clearly distinguish between requests for OI investigations and requests for OI assistance. OI assistance refers to those situations where there is a need for OI support (e.g., conduct of an interview) in an inspection to collect additional data or information so that a reasonable determination can be made as to whether wrongdoing may be involved and whether there is a regulatory need for an OI investigation. OI assistance appears to be the type of OI effort that may not be resource-intensive and for which OI may be able to provide prompt, valuable support to the staff. OI guidance to its field offices on this issue is needed to ensure a consistent response to regional requests for assistance. Similarly, guidance is needed for the regions as to how and when to request OI assistance.

(3) To foster closer coordination between OI and staff, OI staff should be encouraged to attend pertinent regional enforcement conferences, allegation panel meetings, and management meetings. In those cases where OI initiates its own inquiries or investigations, it should coordinate with the Regional Administrator or the Program Office on the status of the staff's deliberative process. The clear definition of the regulatory need evolves from the deliberative process; to ensure that the appropriate regulatory need will be satisfied by the OI effort, close coordination between OI and the staff during initiation of, as well as during the conduct of, the investigation should be encouraged.

(4) OI and regional staff should be encouraged to provide feedback to each other more routinely. The development of additional technical information resulting from certain OI investigative efforts can be important in deciding on the appropriate regulatory action. Consequently, when a technically knowledgeable individual works on selected OI efforts, the results can be more useful. Such presence would contribute to a more meaningful feedback upon which changes could be considered in the priority, need for, and direction of the investigation. Conversely, OI presence on certain staff inspections could provide additional perspective to the staff. To ensure feedback is attained, OI field offices and regional managers should hold periodic briefings on status of activities in progress. These briefings could also assist in the regional prioritization of cases.

(5) Efforts should continue to ensure that the Commission's guidelines of January 10, 1986 for requesting and prioritizing investigation requests are consistently interpreted. In this regard, the form used by the staff to request an investigation should be modified in certain respects. First, the form should be revised to require a short statement of the safety significance of the issue. To enhance more consistent and uniform application of the guideline(s), the form should also include in the prioritization request a reference to the applicable subparagraph of the guidelines which best matches the rationale for the priority.

(6) The IRB process has fostered improved communication and coordination among the regions and between the regions and headquarters. Participation of representatives from the Office of General Counsel (OGC) and the Staff Director for Regional Operations and Generic Requirements (DEDROGR) has been valuable in providing constructive suggestions and recommendations; the synergism resulting from the IRB discussions has been most beneficial and the consensus decisions of the IRB have resulted in no cases being contested by any requesting region or office. Although at times, the IRB process was resource intensive because of the time commitments on the IRB members (routine meetings usually required 2-3 hours), the level of involvement was desirable in light of the variety of issues. It is recommended that the level of management and composition of the IRB be reevaluated. In light of the recent reorganization, representation from the Office for Analysis and Evaluation of Operational Data (AEOD) is recommended since that Office has increased involvement in operational events at both reactor facilities and non-reactor licensees. Participation by the newly created Office of Enforcement under the Deputy Executive Director for Regional Operations (DEDRO) is recommended because the enforcement function has been transferred from IE to DEDRO. Accordingly, a reconstituted board made up of four SES-level senior managers could continue to provide the function of the IRB.

(7) On the basis of the considerations listed above and the comments provided by the Regional Administrators, the IRB in its present configuration and its review process should be retained, unless Regional and Headquarters SES-level managers become more involved in the referral process. If the IRB is retained, the membership of the IRB should be modified, in light of the reorganization, to include representation from NMSS, NRR, AEOD, and DEDRO. Attendance by OGC and OI should be encouraged; their views on wrongdoing need to be more fully considered by the regional and headquarters staffs.

(8) Retain the concept of a national priority listing that is periodically updated. At least every six months, all pending OI cases should be reevaluated for their regulatory need and priority. The program offices (NRR and NMSS) with participation of senior managers from each region in conjunction with the Deputy EDO for Regional Operations should reassess all cases so as to provide a prioritized tabulation to OI. Based on the initial ranking developed to date, OI should give consideration to address on a priority basis the large number of pending cases in Region III as well as to provide dedicated resources for the relatively large number of TVA cases.

(9) The concept of an emergency OI referral should be retained. Guidance needs to be developed for the Regional Administrators as to the threshold of such requests and the need for coordination with the respective Program Office. Emergency referrals are infrequent (four in six months) and do not appear to impose a burden on the staff. Their treatment reflects the urgency of the matter and its immediate potential impact on public health and safety. Emergency referrals from the region should be coordinated with the appropriate program office and the Deputy EDO for Regional Operations.

Advising the IRB Chairman, in accordance with the charter, of the emergency referral describing the event and rationale for the referral has worked well. A copy of the final written request should routinely be forwarded to the IRB for information.

Enclosures:
1. EDO Memorandum dated October 20, 1986: System for Coordinating, Reviewing, and Approving Requests for Investigation
2. Staff Requirements Memorandum (SRM) dated January 10, 1986 -- SECY-85-369, "Threshold and Priorities for Conducting Investigations"
3. Memorandum from IRB to the EDO dated March 20, 1987 re: National Priority Listing of Pending OI Cases
4. IRB New Referral Disposition Table
5. Review of OI Referrals Over Time with Attachments:
   - A. Regional Referrals Provided to OI by Region (9/85-11/10/86)
   - B. Regional Referrals Provided to OI by Region (11/10/86-4/9/87)
   - C. Disposition of Regional Referrals Provided to OI by Region (9/85-11/10/86)
6. Tabulation of Selected Cases Closed Administratively by OI
7. Summary of 13 Cases Not Recommended for Investigation Referral by IRB
8. Proposed IRB Recommendations dated April 10, 1987
9. Comments Provided on Proposed IRB Recommendations

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

CHAIRMAN

October 16, 1986

COMLZ-86-17 (COMJA-86-10)

MEMORANDUM FOR: Victor Stello, Jr.
Executive Director for Operations

FROM: Lando W. Zech, Jr. Lando W. Zech Jr.

SUBJECT: PROPOSED INVESTIGATION REFERRAL BOARD

In response to your memoranda of June 11, August 4, and August 28, 1986, the Commission authorizes you to establish an Investigation Referral Board for a six month trial period as proposed in your August 4 and August 28, 1986 memoranda. Near the end of the six month period you should report on the effectiveness of the board, the resulting time commitments of the senior NRC management member of the board, and the need to retain the board beyond six months.

Commissioner Asselstine does not approve your proposal for an investigation referral board, but agrees with Ben Hayes' proposal of October 3, 1986 (wherein the staff would provide information copies to OI of all matters referred to the Board) as an acceptable means for ensuring that OI is aware of items being considered by the referral board.

Commissioner Bernthal believes that you are free to establish a referral board without requesting Commission concurrence, provided of course that staff always understands that any member of this agency may refer a matter to OI, should any individual feel it necessary to do so.

Copies:
Commissioner Roberts
Commissioner Asselstine
Commissioner Bernthal
Commissioner Carr
SECY
OI

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

APR 28 1987

The Honorable John Glenn, Chairman
Committee on Governmental Affairs
United States Senate
Washington, DC 20510

Dear Chairman Glenn:

During the course of your Committee's April 9 hearing you offered me the opportunity to provide a written response to a number of issues raised by witnesses who testified at that time. I will appreciate your consideration of my comments because the charges already on the record cannot be evaluated fairly in the absence of a response. I do not believe any organization is perfect. Mistakes are made and from time to time errors in judgment occur. But to cause such issues to reflect on the entire staff of the NRC is fundamentally wrong. I am convinced that the NRC staff includes the most knowledgeable and professional experts on nuclear safety to be found anywhere in the world. The staff is dedicated to essentially the single mandate of protecting the health and safety of the public. I am confident that my response, which includes issues raised regarding certain staff actions, will resolve these issues to your satisfaction.

My sworn and notarized response is enclosed and is respectfully submitted for the Committee's record. In this regard, I am disappointed that my ability to provide more complete information for the record has been inhibited by the decision to limit access by my staff to deposition transcripts which the Committee intends to make public anyway. The restricted transcripts are returned herewith.

Sincerely,

Victor Stello, Jr.

Victor Stello, Jr.
Executive Director
for Operations

Enclosures:
1. Written Statement and
   Detailed Appendix
2. Depositions of Hayes and Mulley

cc: The Honorable William V. Ross, Jr.

I, Victor Stello, Jr., hereby swear that the statements in my "Written Statement Before the Senate Committee on Government Affairs" dated April 28, 1987 and the statements in the "Detailed Appendix to Written Statement" attached thereto are true and correct to the best of my knowledge and belief.

Victor Stello, Jr.
Executive Director
for Operations

Subscribed and Sworn before me
this 28th day of April, 1987,
at Bethesda, Maryland

Melinda L. McDonald
Notary Public
My commission Expires: 7/1/90

WRITTEN STATEMENT OF VICTOR STELLO, JR., EXECUTIVE DIRECTOR FOR OPERATIONS US NUCLEAR REGULATORY COMMISSION

BEFORE THE SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS
APRIL 28, 1987

On April 9, 1987, the U.S. Senate Committee on Governmental Affairs conducted a hearing on "The Need for an Inspector General at the NRC." During that hearing three NRC employees and a former Department of Justice attorney made a number of allegations concerning me personally and the activities of the NRC staff reporting to me. Senator Glenn invited me to respond in detail to the Committee after I had had an opportunity to review the record.

I believe a perspective concerning the relationships and responsibilities of three Commission offices -- the Executive Director for Operations (EDO), the Office of Inspector and Auditor (OIA), and the Office of Investigations (OI) -- is required. I have three observations derived from the testimony before the Committee which I will discuss in some detail.

First, it is clear that OI, OIA, and the EDO and their respective staffs have not been working well together. Those relationships must improve.

Second, there is a reluctance among some agency employees to report allegations of internal misconduct to OIA or to use the agency differing professional opinion process.

Third, it is perceived by many of the NRC staff that OI places excessive emphasis on criminal matters as a first priority rather than obtaining information to permit the agency to carry out its safety mandate, while at the same time OI perceives that the staff does not sufficiently support investigations of wrongdoing.

The President's Commission on the Three Mile Island Accident (Kemeny Commission) stated, "The huge bureaucracy under the commissioners is highly compartmentalized with insufficient communication among the major offices." (overview p. 21) The Commission's Special Inquiry Group (Rogovin) in its Conclusions and Recommendations on Safety Management Factors (p. 1239) recommended that the NRC "Examine and modify the NRC organization as required to ... assure that safety is implicit in the functions of all offices." (p. 1241) As Chairman Zech pointed out at the hearing (Tr. 73), the NRC has many independent offices, committees, and investigatory units and it is difficult to get all these independent bodies to focus on the agency's primary safety mission. In spite of every major management study of the NRC recommending a single administrator, it is clear that Congress has not been willing to establish a form of organization that would enhance NRC's ability to effectively focus and carry out the agency's safety mandate. Recent efforts to improve the organization of the staff offices reporting to the EDO reflect the Commission's resolve to strengthen NRC's attention to its safety mission. The investigatory mission which ensures the integrity of staff and licensee performance also is important and necessary. The organizational structure of the investigatory functions, however, makes it difficult to prioritize and focus on matters which are of greatest importance to achieving the safety mission.

I need to digress for a moment to explain more fully the basis for my statement regarding the impact of your proposed legislation Tr. (168-9). The observations already noted and issues I will present later suggest to me that the language of the proposed legislation would put further emphasis on the isolation, independence and criminal aspects of OI investigations. Such emphasis would serve to make resolution of the management problems we now face even more difficult. More to the point, it would result in less safety. I am firmly convinced this need not happen. Better working relationships have recently been achieved between NRC and DOJ. Increased management attention to the underlying issues will foster increased understanding by OI and EDO staffs of each others' responsibilities and sharpen everyone's focus on the agency's

fundamental mandate to protect the health and safety of the public. This is a significant management challenge. Decreasing the Commission's management latitude, which I believe the proposed legislation with respect to OI will do, will only compound the problem. One final point in this regard: day to day safety oversight of facilities is an operational responsibility delegated to the EDO and staff offices. It is vital that safety issues investigated by OI be efficiently and effectively integrated into the day to day operations.

The reluctance of some employees to go to OIA for fear of retaliation and damage to their professional careers is not a new problem in this or other agencies. The Commission has put in place "open door" procedures, a differing professional opinion process, and has repeatedly informed employees of their right to go to OIA in confidence. The Rogovin report suggested an agency "ombudsman" for employees who wish to have their safety concerns pursued without risk to their professional career. If an independent IG could overcome the perception that "whistle blowing" is dangerous to one's career no matter how significant the safety concern the employee may have, I would endorse it without hesitation. Whatever mechanism is decided upon, however, should not excuse anyone (the IG, the employee, or line management) from ensuring that the agency's senior responsible safety officials are fully informed at the earliest opportunity of the management issues which could affect the safety mission of the agency.

The principal allegations concerning the EDO and his staff made by witnesses before this committee involved the agency's investigative function of licensee activities rather than its inspector general function. Even the allegations related to NRC employee misconduct were related to "interference" with the investigative function. Since the inception of the Atomic Energy Commission, through the creation of the NRC and continuing until the present, an important tool used to fulfill the Commission's paramount responsibility to protect the public health and safety has been the inspection of licensees and their activities. While inspections identify violations of regulatory requirements, thus enabling prompt and effective enforcement action, the single most

important purpose of inspections, whether or not a violation of requirements is identified, has been, is, and always will be the identification of safety issues so that appropriate actions can be taken to resolve them. The individuals who are best qualified to perform this important function have education, training, experience, and knowledge which is primarily technical in nature.

Historically, these technical inspectors occasionally encountered circumstances which involve wrongdoing and which could have affected safety. The technical inspectors, however, lacked investigatory training and competence to pursue deliberate licensee wrongdoing. Therefore, trained investigators were hired to assist the inspectors in performing the primary functions of identifying and resolving safety issues. As the number of licensees increased there was more frequent need for such assistance. This led to hiring more investigators and eventually to the creation of OI as a separate organization. More importantly, it was recognized that the quality and thoroughness of investigations needed substantial improvement. OI is comprised of individuals whose background, training, experience and interest is in perfecting criminal investigations. As professionals in that line of work, OI personnel are naturally oriented to obtaining information necessary to prosecute and convict individuals rather than being oriented to providing assistance in obtaining safety information for making regulatory decisions. I fully recognize the importance and deterrent effect that criminal investigations, referrals, prosecutions and convictions can have. I fully support that deterrence. I have consistently urged early referral of such matters to DOJ. However, in my view the primary mission of OI and its focus must be first on obtaining information to make regulatory decisions. That information can then be used to support the criminal process under the supervision and direction of DOJ.

Problems which developed between OI, and the EDO staff offices stem from a failure to accept the identification and correction of safety problems as the primary focus of this agency. That focus demands that OI and the EDO offices

work closely together and share whatever information there is which could affect safety decisions. Should OI fail to provide the staff with information needed to make safety judgments and decisions, the staff cannot effectively discharge its responsibilities. It should be noted in this regard that the director of OI is not authorized to take necessary actions to correct safety problems; rather, his responsibility is to relay any safety-related information to the staff promptly.

. . . .

Many of the concerns raised by Mr. Hayes involve matters which predate actions taken by the Commission to reorganize and refocus agency offices on the safety mission. Earlier problems should not be mixed with whatever problems may exist today. If a safety issue is identified during an investigation, OI field investigators tend to provide the staff with such information promptly. For example, OI efforts have been helpful in achieving the safety mission of the agency in cases such as Radiation Technology, Wright Patterson Air Force Base, Bloomington Hospital, Mercy Hospital, Peach Bottom, American Testing, and Advanced Medical. The information from OI permitted the agency to act promptly, frequently without waiting for the completion of the investigation report. There are also examples of cases where the technical staff provided technical assistance to DOJ during its investigations and grand jury inquiries relating to cases referred to DOJ by OI such as: TMI, Zimmer, D.C. Cook, Advanced Medical and International Neutronics. Close working relationships in these cases proved effective in discharging the agency's safety mission and helped to foster a better understanding and appreciation of the functions of OI and staff. In contrast, when the results of an investigation were needed to decide what regulatory action was necessary, delays in the release of investigatory reports created tension and frustration for both OI and technical staff officers. In my view, the fundamental reason for this latter problem was the undue emphasis on independence of the investigative function. Examples of cases in which this occurred are Fermi, Sequoyah Fuels and the TMI Polar Crane issue. The OIA Comanche Peak investigation, as explained, was of special concern to me from a management perspective.

In my view, the agency's investigatory arm should not have its primary role defined as building a criminal case rather than developing safety information for those in the agency who need it to effectively discharge their duties. The Chairman has made it clear to the directors of OI, OIA and the EDO that each has responsibilities and sufficient latitude to do their respective jobs. Because the EDO offices have the responsibility to act on safety matters, my desire and that of my staff to be promptly informed may be viewed by OI and OIA as "pressure to complete.an investigation". Such perceptions are unfortunate but may be inherent in the conflict between the desire to make prompt safety decisions and the need to conduct a thorough and complete investigation. I address this issue further in the Appendix. When management or safety information is involved, OI and OIA are clearly required to pursue such information on a priority basis in order to ensure that I receive it as soon as possible in order to act in an informed and timely manner.

Concentrating on any area of difficulty can have a tendency to exaggerate its significance. Such is the case, I believe, with the testimony before this Committee on the OI function - including my own comments. The fact is that we are well aware of the problem. The Commission and all of its senior management are committed to its resolution. Indeed, while we have made mistakes in the past, recent indications from the DOJ suggest that matters are getting better. When investigations are accomplished jointly with the technical staff, the results are readily accepted, regulatory action is accomplished promptly and feelings of contributing to the agency mission and job satisfaction are readily apparent.

DETAILED APPENDIX TO WRITTEN STATEMENT OF VICTOR STELLO, JR.
EXECUTIVE DIRECTOR FOR OPERATIONS

Testimony of witnesses presented by the Committee and its staff on April 9, 1987, asserted or suggested the following improper actions on my part or on the part of NRC staff reporting to me and for whom I am fully accountable and responsible. In general those witnesses have asserted that:

- I [we] are opposed to, or at least soft on, criminal prosecutions in the nuclear industry;

- I [we] engaged in actions designed to frustrate successful criminal prosecutions;

- I [we] are "too cozy" with the licensees we regulate as demonstrated by:

    - my telephone call with Mr. White of TVA

    - attempts to control OI's investigations

    - tipping licensees to OI investigations;

- I put pressure on OIA to complete an investigation.

I believe these charges, generally, reflect a misunderstanding of the agency's principal obligation to protect and promote public health and safety. For that reason and also because the charges impugn my personal reputation and performance, I have prepared this response for the record.

I am neither opposed to nor soft on criminal prosecutions. While the NRC has an obligation not to obstruct a DOJ criminal investigation, that obligation

does not include a presumed duty on the part of NRC to conduct criminal investigations either on its own or at the demand of DOJ for purposes unrelated to its safety mission. Therein is the problem, particularly because of the large backlog of pending OI investigations, the results of which are needed to resolve safety issues in a number of cases. Both Mr. Hayes and Mr. Greenspun have criminal investigator/prosecutor backgrounds. It is, perhaps, understandable that, given a lack of technical backgrounds, Mr. Hayes and Mr. Greenspun see things as they do.

The NRC is not primarily a criminal investigatory or prosecuting agency any more than are the agencies which regulate flight safety or food safety or mine safety. But, as is the case with those other agencies, occasionally in the course of carrying out our regulatory responsibilities, we run across conduct which could amount to criminal wrongdoing. When this occurs the matter should be referred to DOJ for appropriate disposition. It is not the function of this agency to attempt to "make" a criminal case for purposes of conviction. Nor is it our primary function to act as an agent of the DOJ and pursue a criminal investigation for that Department. We do, however, cooperate with DOJ and in appropriate cases provide resources to DOJ. Examples of such cooperation were cited earlier. It must be recognized that when we do this, it reduces the limited resources available to us for carrying out our mission of protecting public health and safety. Thus, we have fewer investigators and inspectors to pursue issues directly related to our health and safety mission. For this reason, we must exercise care in employing such resources only where the public health and safety benefits from successful prosecution warrant the resource expenditure.

Concerning the question of whether I took actions designed to frustrate successful criminal prosecutions, Mr. Greenspun addressed issues related to Three Mile Island and accused me of acting improperly regarding those issues. In doing so, he resurrected old issues which have been thoroughly investigated and resolved by both the FBI and a Federal Grand Jury. I could respond specifically to each of his charges, but I do not believe it is necessary. My

reading of the FBI report and my understanding of the Grand Jury's actions lead me to conclude that all of the issues investigated by the FBI and grand jury were resolved by finding no wrongdoing on my part by design or otherwise. I continue to be troubled by the fact that Mr. Greenspun, using his prosecutorial authority, could head an investigation into issues in which he was personally involved. I think his personal involvement is clear from his own testimony before this Committee. Certainly, his own conduct could have been an issue in such an investigation. I leave to others to judge the propriety and ethics of such behavior. I urge you, Mr. Chairman, to obtain a copy of the FBI Report No. 46A-11367, dated July 1, 1986 and examine it. I trust it will demonstrate to your satisfaction that these old charges were resolved contrary to Mr. Greenspun's personal biases.

Mr. Greenspun also stated that he personally requested that I not meet with a licensee under investigation, and that I subsequently engaged in a lengthy discussion with that licensee. He further stated that the meeting "unnecessarily derailed criminal prosecution," that I knew this would be the result, and that I and my deputy "confessed away the case." Having reviewed the documentation of events of over seven years ago, and after discussions with the other participants, I can state that Mr. Greenspun's interpretation is not correct. The particular case referred to involved an NRC licensee named Nuclear Pharmacy, Inc. (NPI).

When I received the proposed enforcement package from NRC Region III in the summer of 1979, it appeared to me that NPI had committed a very serious violation. The Region had cited NPI for shipping containers of Xenon gas, which were not designated as fit for human use, to various hospitals to be used on humans. Review of records indicate that I decided to substantially increase the civil penalty proposed by the Region. Also, I believe my staff and I considered revocation of the license. In June of 1979 as the then Director of the then Office of Inspection and Enforcement (OIE), I referred the case to the NRC Office of Inspector and Auditor (OIA) for possible referral to DOJ, but retained the right to continue investigating health and safety

implications. The notice of proposed civil penalties was sent to the licensee in August. The licensee responded vigorously, insisting that there were no health and safety problems and that, given the wording of its license, its actions might not constitute a violation.

During the fall of 1979, numerous meetings were held with FDA and others. As these meetings progressed it began to look as though NPI's actions were less serious than originally believed. Nevertheless, in October of 1979 OIA had referred the NPI case to DOJ. At that point NRC lawyers were in touch with DOJ. At no time did the lawyers from DOJ indicate that the NRC should refrain from contacting the licensee. Within this time frame, we considered using a form of consent decree in which the licensee would admit culpability. By the end of 1979 it became evident that NPI would not agree to the type of language in the consent decree that I deemed necessary. As a result, NPI was informed that no settlement would be forthcoming.

NPI thereupon requested one final meeting to present their side of the case. This meeting took place on January 21, 1980, and is the one referred to by Mr. Greenspun. Its only purpose was to hear whether NPI had any new information; not to make any concessions on the part of the NRC. Where the public health and safety is concerned, I believe it is my duty to elicit as much information as possible. During the meeting, NPI reiterated its previous arguments. No statements were made by either me or my staff that could be construed as weakening the case against NPI. Subsequent to that meeting I was informed that Mr. Greenspun had taken the position that there should be no contact between the NRC and NPI, and that the meeting had compromised the DOJ case. I do not agree with Mr. Greenspun's interpretation. In a letter dated November 20, 1981, from Mr. Greenspun to the attorney for NPI, he stated that DOJ had decided to defer prosecution, and that the decision "is substantially based on NPI's representation that it has rectified the activities in question and will continue to comply with NRC rules and regulations". In February of 1982, the NRC Staff imposed its civil penalty on NPI.

Another case cited by Mr. Greenspun (Tr. 129) concerns the now abandoned Zimmer facility. He states: "For years NRC inspectors were finding serious problems at the Zimmer plant in their inspections, and were told by the regional office in Chicago not to write it up and in reports but to keep a little notebook of violations he was finding. So, if the inspector got hit by a truck, nobody would know about the violations." This is a new allegation. Current Region III personnel who were closely associated with the NRC inspection of Zimmer during the late 70s and early 80s know of no such allegation or occurrence. Had such an allegation been made to Region III, it would have been referred to OIA. Had such a practice been identified, it would have been corrected.

Mr. Greenspun also alleges that "This plant was about to open, the Zimmer plant, shortly, but for a whistleblower by the name of Applegate, who twice had to go to the NRC after they did a couple whitewash investigations." At the time of the Applegate allegations, construction of the Zimmer plant was not complete and preoperational testing of the plant was in the earliest stages. Hence, the plant was not ready to start operations. The Region III investigators initially reviewed all of Mr. Applegate's allegations and concluded that three warranted NRC investigations. The other allegations concerned matters which were thought to be more properly addressed by other regulatory bodies. The results are documented in Investigation Report No. 50-358/80-09. In the second investigation, the NRC inspectors and investigators looked at all 19 Applegate allegations, four allegations made by quality control inspectors, three allegations received through site interviews, in addition to other areas of NRC concern. The results of the second investigation are documented in Investigation Report No. 50-358/81-13 and resulted in a $200,000 civil penalty against Cincinnati Gas and Electric Company, the licensee, and led to the NRC requiring major corrective action programs and a verification of the quality of completed construction. In retrospect, receipt of the allegations which prompted the second investigation perhaps should have led to the staff's identification of the significant breakdown of QA activities.

Finally, Mr. Greenspun concludes: "So you had a plant that would have opened that was eventually found, the Zimmer plant, to be so unsafe -- once they were publicly exposed, were found so unsafe that they could not allow it to open. But for a whistleblower, that wouldn't have happened and it could have opened." Although Investigation Report 50-358/81-13 documents many problems, the report did not reach the conclusion that the plant was unsafe. These findings, subsequent NRC findings, and licensee inspection findings raised sufficient quality questions that the NRC required the licensee to submit a plan to verify the quality of construction of the plant. Before this plan could be completely carried out, the licensee terminated construction of the nuclear facility with the intention of converting it to a coal fired plant.

In addressing the charges concerning whether my staff or I are "too cozy" with the licensees we regulate, it is necessary to understand that by necessity the technical safety staff and I have daily contact with licensee representatives. We also have daily contact with other members of the public with interest in the matters we regulate. The purpose of these contacts is for the exchange of information. When licensees have questions concerning NRC policy or rules, they do not have to speculate but are perfectly free to pick up the phone, call an appropriate NRC official and request information. To suggest that such contacts are inappropriate reflects a misunderstanding of a public official's duty to be responsive. In fairness one could criticize the staff for being too concerned over the regulatory action needed to correct problems. This in fact was one of the concerns expressed by the OI staff during the meeting I mentioned at the hearing. (Tr. 169-70). In this regard it is of interest that Chapter IV on Safety Management of the Ropovin Report (p. 1241), recommends that NRC announce as a matter of policy "that prosecutorial discretion will be exercised to effect a meaningful balance between enforcement of rules to ensure their accomplishment and yet encourage close cooperation with industry in communications to prevent accidents."

During early 1986 we were also being criticized for not being aggressive enough in identifying issues that needed to be resolved specifically on our

review of the TVA issues. This is an especially difficult issue. If the staff recognizes actions that can be taken to resolve a regulatory concern, should such actions be identified? This is compounded further when the basis for action is derived from an ongoing investigation. Frequently this also involves one or more specific individuals, the disclosure of whose identity could have the potential for interfering with an investigation or prosecution and therefore precludes the staff from identifying these individuals to the licensee. We are then faced with a difficult choice -- keep a facility shut down for months or as long as it takes to complete the investigation and DOJ review when applicable, or risk compromising the investigation by removing and thus disclosing the problem individuals. If DOJ were to prosecute the case the shutdown may extend for years. It is my belief that the public interest is best served when we aggressively resolve regulatory issues. I also believe this is what Congress intended but I recognize it contributes to the unfounded accusation of being "too cozy" with licensees.

We are currently working with DOJ on a memorandum of understanding to structure such discussions to further the statutory missions of both agencies. The proposed legislation involving an independent OI will serve to further distance its investigation efforts from the technical staff responsible for safety. It is in fact important that OI and the staff work together to first identify and correct the safety problems and, by so doing, to assure that facilities can be restored to operation and public service. For example, we frequently attempt to correct safety problems at hospitals or firms serving hospitals through use of our enforcement sanctions, in order that the practice of nuclear medicine can be resumed in the public interest. Examples are Mercy Hospital, Valley Radiological Clinic, Advanced Medical Systems, Bloomington Hospital, and Lakeview Hospital.

During the hearing there were two basic issues related to a phone call between myself and Mr. Steve White of TVA. (As in this case, I routinely return phone calls in the presence of senior staff.) The first issue deals with the adequacy of the OIA investigative process itself in which I had no involvement

other than being interviewed and therefore have no comment. The second issue relates to Mr. Hayes' characterization of the phone call as improper. In contrast, the OIA conclusion regarding this matter as stated in the report dated August 28, 1986, is: "There was no information developed during this investigation to substantiate any impropriety on the part of STELLO during his telephone conversation with WHITE..."

Mr. Hayes' concern over this matter was, as noted in the OIA report, "in light of the fact that we already had an ongoing material false statement investigation." The existing investigation he mentioned in testimony relates to the prior senior TVA nuclear manager attesting to Watts Bar Unit 1 readiness for fuel load in April 1985. That investigation deals with the state of that manager's knowledge of the plant at that time. Subsequent to that, many employee allegations and TVA inspections have indicated that potential quality problems exist at Watts Bar. In fact, the NRC staff's letter to TVA in January 1986 questioning compliance with Appendix B at Watts Bar was based on the work of TVA's own Nuclear Safety Review Staff. Thus, these matters arose subsequent to the April 1985 letter and were not a part of the ongoing OI investigation referred to by Mr. Hayes. Clearly, the telephone call from Mr. White was not related to the investigation of the prior senior TVA nuclear manager. To suggest otherwise would imply the entire NRC review of TVA problems is likewise related to the ongoing investigation of the TVA's April 1985 letter on Watts Bar.

Specifically, now referring to my sworn deposition taken relative to this matter dated July 30, 1986, I identify at least two telephone conversations related to Appendix B issues. In one conversation I indicated to Mr. White that he ought to finish his job and then respond to the letter. Mr. White indicated that he made the commitment to respond by a specific date and would do so. As the facts related to this matter show, Mr. White did in fact respond on March 20, 1986. Mr. White had taken over the leadership of TVA in January 1986 and was therefore on the job only a relatively short time. My concern was that he should have taken the time to understand the overall

status of Q/A problems at TVA before responding. Apparently, he felt constrained by the commitment to respond in a certain timeframe. In fact, conversing on technical issues is part of my job and indeed that of the NRC staff -- as long as the matter itself is not under investigation. As previously stated, this matter was not under investigation. For cases under investigation, we have procedures which cover how such discussions are to be conducted to assure safety issues are resolved while not prejudicing ongoing investigatory activity.

A second conversation with Mr. White concerned the need to assure that he needed to continue to pursue Appendix B issues and to inform the NRC of any significant problems identified related to the Appendix B issue. Indeed our regulations require such activities as discussed during the conversation. By the way of background, I knew Mr. White's previous experience was with the nuclear navy program, which is not governed by the code of Federal regulations used for commercial nuclear facilities.

In summary, both my conversations with Mr. White of TVA, only one of which has been the subject of criticism by Mr. Hayes and about which two of my senior staff members felt "uncomfortable":

- were initiated by Mr. White;

- transmitted no substantive information to Mr. White;

- centered upon emphasizing the needs of the NRC for full and complete information; and

- were in the interest of the regulatory functions of this agency.

In those circumstances I did not then and do not now see anything approaching impropriety in the conversation. Indeed, the sort of contacts with licensees and others which are not appropriate have been set forth in a set of

guidelines I have proposed to be added to those which already have been adopted by the Commission. Those guidelines do cover such matters as staff review of draft responses to enforcement related documents but they cannot be reasonably construed to cover telephonic admonitions to provide the NRC with the fullest and most complete information available -- the sum and substance of my conversations with Mr. White.

As discussed in part earlier, Mr. Hayes must view my demand to be informed about safety information in his possession and to have investigations with significant safety implications pursued on a priority basis as "attempts to control OI's investigations". The Investigation Referral Board (IRB) was established not to control OI but as a management tool to assure that matters referred to OI for investigation met the dual threshold test established by the Commission of (1) a reasonable basis to believe that wrongdoing occurred, i.e., the violation at issue appears more likely to have been intentional or to have resulted from careless disregard or reckless indifference than from error or oversight, and (2) there is a regulatory need for an investigation. The first threshold is important to differentiate what cases should be handled by the staff inspection process in contrast to the investigation process. The second threshold is important because in some cases there may be sufficient evidence available to make a regulatory decision without the need for an investigation.

In making its recommendations the IRB considers the various perspectives and views of senior managers in the offices of NRR, NMSS, EDO, IE, and OGC. OI was invited to participate in the IRB deliberations because they would offer insight on wrongdoing issues and perspectives on what matters need to be investigated. However, while they were given notice of meetings, OI chose not to participate in IRB activities. Nevertheless, OI is given a copy of each case that the IRB considers as well as a copy of the decision of the IRB. This preserves OI's option to self-initiate an investigation if it believes one is appropriate.

It should be noted that the IRB serves in a advisory role. In an emergency, regional administrator can initiate an investigation without first consulting the IRB. In addition, if not satisfied with the views of the IRB, a regional administrator may refer a case to OI anyway, after discussions with the Executive Director for Operations.

Another important function of the IRB was to establish a national priority of cases for OI investigation based on regulatory significance and need. The Commission has established guidance for establishing priorities for investigations. However, with five regional offices, many different types of licensees with differing potential hazards, and guidance which by necessity is broad, it is difficult to establish uniform priorities. Recognizing that, regions may have issues of varying importance (for example, a high priority in region X may be a normal priority in region Y), it was important to establish a national priority listing to assure that the agency's investigatory resources were being focused on the most important safety issues. The IRB with the assistance of senior managers from the regions established a national listing which is expected to be updated periodically.

In response to the concern about the change in the referral rate since the IRB, a tabulation of regional requests for investigations by month was developed. A formal OI referral process was instituted by the EDO in the summer of 1985 requiring written requests. Consequently, there is a paucity of records prior to this time period. Based on our statistics the regions showed the following number of cases referred to OI for the 14½ month period prior to the IRB:

I	II	III	IV	V	
14	31	10	15	17	TOTAL (87)

Prior to the IRB, during the 9/85 to 11/10/86 timeframe nationwide there were 87 regional referrals; this number is equivalent to 72 referrals on an

annualized basis. A breakdown of the historical numbers shows that the TVA cases have had an impact in that Region II has essentially twice as many referrals as any other region. Of the 31 cases in Region II, 22 dealt with TVA. Putting the TVA cases aside, it leaves an annual rate of 54 cases. Similarly, it is of interest to note that in the 5½ month period before the formation of the IRB, both Regions I and III had only two referrals each. After formation of the IRB, Region I had two cases referred to OI and Region III had five cases referred to OI.

For the five month period of the IRB examined herein (11/10/86 to 4/9/87, the regions have submitted a total of 25 requests, two of which were sent directly to OI in accordance with emergency referral provisions. The cases identified by the regions during the five month interval are :

I	II	III	IV	V	
2	5	5	10	3	TOTAL (25)

However, there is a unique situation in Region IV that warrants special consideration. In response to OI, the region classified one request as eight individual referrals since eight different dockets were involved. One could view, as the Region IV originally did, that this should be counted as one request. This affects the statistical comparison since the volume during the 5-month period could be viewed as 17 requests. The 25 cases identified by the regions are equivalent to 60 on an annual basis; adjusting for the above noted anomaly equates to about 40 cases annually, as compared to the previous year's annual rate of 54 cases when TVA is excluded.

However, the rate at which regions identify possible cases is not indicative of what is formally transferred to OI. Although OI has been provided copies of all submittals to the IRB, not all cases receive IRB approval; notwithstanding, experience has shown that the regions have accepted the IRB recommendations in all cases. Consequently, 13 cases have been referred to

OI; two of which have been emergency referrals. This volume is equivalent to about 30 referrals on an annualized basis. This reflects a decrease of about one-half from what has been experienced historically. However, the cases reviewed by the IRB have undergone a more thorough screening for completeness and prioritization such that they should not be rejected or denied by OI, as has been done on occasion before the inception of the IRB. As an example, four of the six requests made by Region II in May 1986 were denied by OI. From 9/85 to the establishment of the IRB 55 of the 87 cases referred to OI were treated as inquiries to determine whether a formal investigation should be made. Thus, less than a third (22) were treated as formal investigations.

Based on five months of IRB data it is difficult to draw statistical conclusions that there is a dramatic decline in regional referrals. For example, Region I had referred only two requests to OI in the five months interval prior to the inception of the IRB. In the five month period since the IRB was established, Region I has had two requests forwarded to OI through the IRB. However, the IRB in reviewing cases against the Commission's thresholds have reduced the number of cases referred to OI by about 50%. Cases were rejected for referral because there was not a belief that wrongdoing occurred, investigations were not necessary to permit appropriate regulatory action, or because OI was actively pursuing the matter such that a referral was not necessary.

In sum the IRB has not had a chilling effect on the number of cases identified by the regions. Cases are not hidden. Rather, the cases are being considered in a professional manner. OI is made aware of each action and invited to participate. The IRB is still in its six month trial period and appears to be serving the management function it was intended to serve. However, the staff is in the process of determining whether the IRB should continue past the trial period.

Mr. Hayes' adoption of Commissioner Asselstine's comment that the IRB appears to be a "...thinly veiled attempt by the EDO to control OI by controlling what

referrals are made and thus what OI investigates" is yet another example where there is failure (1) to understand the real purpose of OI investigations and (2) to appreciate the management problems within the agency. Mr. Hayes reluctance to participate in the IRB process is another lost opportunity that could have fostered better communications with the staff, thereby improving relationships. Perhaps more importantly, the real purpose of the IRB -- to function as a management tool to assist both OI and the staff -- could have been more effective. It is indeed disturbing that Mr. Hayes does not see the need for investigations as derived from staff needs. In fact it is the staff who identifies the need for investigations. If there is not a regulatory need (safety), should an investigation be conducted? This should be a rhetorical question; unfortunately it is not. Answering this question and assigning priorities is a legitimate management activity, the fundamental reason for the IRB. I indicated during the hearing (Tr. 169, 184-5) my surprise that any manager could harbor the ill feelings Mr. Hayes did for apparently as long as he has. A manager should recognize the conflict and arrange a meeting to discuss and resolve the issue. If it could not be resolved it should have been escalated. I also noted during the hearing two meetings I arranged with Mr. Hayes' senior staff to discuss issues. I invite Mr. Hayes to our periodic meetings to interact with my senior staff. It is difficult to resolve differences and manage conflict without cooperation. In all candor, I cannot recall a single instance during my tenure as EDO (15 months) when Mr. Hayes has made an effort to resolve these conflicts. I find this to be a disappointing management attitude, which must be overcome to resolve the conflicts. The purpose in providing the foregoing information is to clarify the difficult nature of the management problem. However, it does not change my resolve to continue in whatever way I can to improve working relationships to an acceptable level. I intend to continue my monthly meetings with Mr. Hayes and expect Mr. Hayes will participate in our next senior staff meeting in June. Furthermore, I will look for additional opportunities to foster enhanced communication and an improved working relationship.

Mr. Hayes cites the Milford Hospital case as an example of where a licensee was "tipped off" about an investigation because the technical staff tried to investigate rather than requesting that professional investigators, such as OI, conduct the investigation. The investigation for the Milford Hospital case is still pending, so I cannot discuss the details. In response to the "tipping off" claim, however, it is sufficient to note that during the course of a routine technical inspection at Milford Hospital, an NRC inspector, in the presence of the licensee's radiation safety officer, identified obvious, uncontested wrongdoing which was admitted by the licensee and the involved individuals and which, therefore, could not, by definition involve "tipping". OI was not requested to conduct an investigation because the charge was already substantiated by the licensee's admission to NRC technical personnel.

Concerning Mr. Mulley's testimony on pressure on OIA concerning the ongoing safety issues surrounding Comanche Peak, on November 26, 1986, OIA issued its Report of Investigation 86-10 addressing allegations of Region IV management wrongdoing relative to inspection activities at Comanche Peak. I will summarize my activities with regard to issues related to that OIA Report.

About March 19, 1986 I was informed that OIA had commenced an investigation addressing allegations of Region IV management wrongdoing relative to Comanche Peak inspection activities. Based on that, the Director OIA and I reached agreement that Region IV would cease further staff action to resolve the inspection issues in contention. In addition, I made arrangements that subsequent inspection findings of Mr. Phillips, the involved Resident Inspector, would be reviewed by Headquarters staff and management rather than the involved Region IV managers.

For about 4 or 5 months OIA continued their investigative work. I became increasingly aware of the negative impact it was having on the morale and effectiveness of both staff and management in Region IV. I became increasingly concerned that the investigation was detracting Region IV personnel from performing their basic job of protecting public health and safety. Some of

the managers for Comanche Peak activities also have responsibilities covering the seven operating nuclear stations in their Region.

In the early summer of 1986, I met with Mrs. Connelly and Mr. Mulley. I expressed my concerns to get the investigation completed. I offered staff assistance to OIA and asked if there were anything else I could do to help them conclude their work. At that time, I was informed the report might be finished in August. In fact, the report was not finished until November.

Mr. Mulley chose in his testimony to characterize my actions as pressure. Frankly, I think I was only doing my job as the responsible staff manager considering the negative morale impacts the OIA work was having in the Region. Further, in a personal sense, I kept a humane balance. Upon hearing in late July from Mr. Mulley that a member of his family was undergoing surgery, I strongly suggested that Mr. Mulley consider his priorities and take whatever time he needed.

It was also suggested by two witnesses that the OIA Report of Investigation 86-10 was indiscriminately distributed throughout the agency. In reference to a December 4, 1986 Commission directive to take action as a result of the Report, the Report was initially distributed to only a limited number of senior staff management officials and selected staff members who were charged with the task of reviewing the Report and its very voluminous attachments in a short timeframe for the purpose of assessing:

(1) whether the Report identified any issues that were of such a nature in terms of safety that immediate action was called for;

(2) whether the Report identified any grounds for immediately initiating any personnel actions;

(3) whether the Report could be released to the public in its entirety or whether deletions were necessary in order to prevent unwarranted

invasions of personal privacy, to preserve the NRC's ability to effectively inspect or investigate any matters identified or refer matters to the Department of Justice for action, or otherwise to preserve the ability of the NRC to act on the Report's findings (i.e., were predecisional); and,

(4) what bearing the Report might have in the ongoing licensing proceeding related to the application for operating licenses for Comanche Peak.

Very shortly after the initial limited distribution, I requested and obtained the Commission's approval to provide copies of the Report and its attachments to six named Region IV staff members who were central to the OIA investigation. I did this for two reasons: first, out of concerns of fairness, to permit these persons to have accurate information concerning the Report prior to its release so that they could knowledgeably deal with the anticipated public inquiries that would most likely follow any public release of the document; and, second, so that management could discuss the Report with them in addressing the issues stated above.

On December 11, 1986, the Commission approved the public release of a redacted version of the Report, with the names of all individuals and certain other information potentially relevant to the conduct of an investigation deleted.

I considered the allegations to be very serious and, with the approval of the Commission, I established the Comanche Peak Report Review Group (CPRRG) and charged it with conducting a comprehensive review of the issues raised in the Report and making recommendations to address the issues. I gave the Chairman of the CPRRG special authority to draw upon whatever staff or consulting resources were necessary or appropriate to comprehensively address the issues. Extensive efforts by senior management and other staff personnel resulted in the CPRRG Report dated March 12, 1987. On April 14, 1987, I transmitted to the Commission my recommendations and proposed actions, and on April 16th, I

briefed the Commission and requested its approval to implement the recommended actions. I also urged prompt release to the public of the OIA Report, the CPRRG Report and my April 14th recommendations. Because this matter is still pending with the Commission, I cannot discuss the details further. I can assure you, however, that the issues raised by the OIA Report have received the closest scrutiny and will be the subject of appropriate action as approved by the Commission.

ITEM I

Comanche Peak Issue

Allegation - during April 9, 1987 hearing...

Mishandling of allegations related to the Comanche Peak investigation.

Response

This matter was investigated by GAO and the GAO Special Report, prepared by David C. Williams, Office of Special Investigations (attached), concluded:

> GAO found insufficient evidence to support the OIA investigator's claims that NRC management interfered with the conduct of the OIA investigation or that results were incorrectly reported.

The GAO report also stated:

> With regard to the distribution of Mulley's report, GAO found no basis to question the conduct of the EDO who explained that the Commission authorized the distribution to assist NRC management in addressing important matters, such as health and safety issues requiring immediate action. Witnesses told GAO they were disturbed about the distribution of the report containing unredacted transcripts of their statements to high level management officials and to the principal witnesses. However, none of the witnesses interviewed asserted that they had been subjected to reprisals. Moreover, none of the witnesses identified in the OIA report or transcripts asked for or received a pledge of confidentiality from anyone in OIA, and Mulley voiced no objection to the release.

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

May 1, 1987

MEMORANDUM FOR: Addressees

FROM: Victor Stello, Jr.
Executive Director for Operations

SUBJECT: LETTER TO SENATOR GLENN CONCERNING TESTIMONY AT HEARING ON APRIL 9, 1987

As you are aware, on April 9, 1987, the U.S. Senate Committee on Governmental Affairs, chaired by Senator John Glenn, held hearings at which a number of allegations were made involving the NRC staff and me personally. Senator Glenn asked me to respond to the testimony. I have done so.

Since my response necessarily touches on allegations affecting the staff, I have enclosed a copy for your information.

Victor Stello, Jr.
Executive Director
for Operations

cc w/encl.
SECY
OI
OIA
OGC
GPA
PDR

MEMORANDUM TO ADDRESSEES FROM VICTOR STELLO, JR., DATED May 1, 1987

James M. Taylor, Acting DEDO
Thomas A. Rehm, Assistant for Operations
William G. McDonald, Director, ARM
Hugh L. Thompson, Jr., Director, NMSS
Eric S. Beckjord, Director, RES
William B. Kerr, Director, SDBU/CR
Edward L. Jordan, Director, AEOD
James Lieberman, Director, OE
Paul E. Bird, Director, OP
James G. Keppler, Director, OSP
Thomas E. Murley, Director, NRR
John M. Montgomery, Director, OC
William T. Russell, Regional Administrator, RI
J. Nelson Grace, Regional Administrator, RII
A. Bert Davis, Regional Administrator, RIII
Robert D. Martin, Regional Administrator, RIV
John B. Martin, Regional Administrator, RV

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

APR 28 1987

The Honorable John Glenn, Chairman
Committee on Governmental Affairs
United States Senate
Washington, DC 20510

Dear Chairman Glenn:

During the course of your Committee's April 9 hearing you offered me the opportunity to provide a written response to a number of issues raised by witnesses who testified at that time. I will appreciate your consideration of my comments because the charges already on the record cannot be evaluated fairly in the absence of a response. I do not believe any organization is perfect. Mistakes are made and from time to time errors in judgment occur. But to cause such issues to reflect on the entire staff of the NRC is fundamentally wrong. I am convinced that the NRC staff includes the most knowledgeable and professional experts on nuclear safety to be found anywhere in the world. The staff is dedicated to essentially the single mandate of protecting the health and safety of the public. I am confident that my response, which includes issues raised regarding certain staff actions, will resolve these issues to your satisfaction.

My sworn and notarized response is enclosed and is respectfully submitted for the Committee's record. In this regard, I am disappointed that my ability to provide more complete information for the record has been inhibited by the decision to limit access by my staff to deposition transcripts which the Committee intends to make public anyway. The restricted transcripts are returned herewith.

Sincerely,

Victor Stello, Jr.
Executive Director
for Operations

Enclosures:
1. Written Statement and
Detailed Appendix
2. Depositions of Hayes and Mulley

cc: The Honorable William V. Ross, Jr.

I, Victor Stello, Jr., hereby swear that the statements in my "Written Statement Before the Senate Committee on Government Affairs" dated April 28, 1987 and the statements in the "Detailed Appendix to Written Statement" attached thereto are true and correct to the best of my knowledge and belief.

Victor Stello, Jr.
Executive Director
for Operations

Subscribed and Sworn before me
this 28th day of April, 1987,
at Bethesda, Maryland

Malinda L. McDonald
Notary Public
My commission Expires: 7/1/90

WRITTEN STATEMENT OF VICTOR STELLO, JR.,
EXECUTIVE DIRECTOR FOR OPERATIONS
US NUCLEAR REGULATORY COMMISSION

BEFORE THE SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS
APRIL 28, 1987

On April 9, 1987, the U.S. Senate Committee on Governmental Affairs conducted a hearing on "The Need for an Inspector General at the NRC." During that hearing three NRC employees and a former Department of Justice attorney made a number of allegations concerning me personally and the activities of the NRC staff reporting to me. Senator Glenn invited me to respond in detail to the Committee after I had had an opportunity to review the record.

I believe a perspective concerning the relationships and responsibilities of three Commission offices -- the Executive Director for Operations (EDO), the Office of Inspector and Auditor (OIA), and the Office of Investigations (OI) -- is required. I have three observations derived from the testimony before the Committee which I will discuss in some detail.

First, it is clear that OI, OIA, and the EDO and their respective staffs have not been working well together. Those relationships must improve.

Second, there is a reluctance among some agency employees to report allegations of internal misconduct to OIA or to use the agency differing professional opinion process.

Third, it is perceived by many of the NRC staff that OI places excessive emphasis on criminal matters as a first priority rather than obtaining information to permit the agency to carry out its safety mandate, while at the same time OI perceives that the staff does not sufficiently support investigations of wrongdoing.

The President's Commission on the Three Mile Island Accident (Kemeny Commission) stated, "The huge bureaucracy under the commissioners is highly compartmentalized with insufficient communication among the major offices." (overview p. 21) The Commission's Special Inquiry Group (Rogovin) in its Conclusions and Recommendations on Safety Management Factors (p. 1239) recommended that the NRC "Examine and modify the NRC organization as required to ... assure that safety is implicit in the functions of all offices." (p. 1241) As Chairman Zech pointed out at the hearing (Tr. 73), the NRC has many independent offices, committees, and investigatory units and it is difficult to get all these independent bodies to focus on the agency's primary safety mission. In spite of every major management study of the NRC recommending a single administrator, it is clear that Congress has not been willing to establish a form of organization that would enhance NRC's ability to effectively focus and carry out the agency's safety mandate. Recent efforts to improve the organization of the staff offices reporting to the EDO reflect the Commission's resolve to strengthen NRC's attention to its safety mission. The investigatory mission which ensures the integrity of staff and licensee performance also is important and necessary. The organizational structure of the investigatory functions, however, makes it difficult to prioritize and focus on matters which are of greatest importance to achieving the safety mission.

I need to digress for a moment to explain more fully the basis for my statement regarding the impact of your proposed legislation Tr. (168-9). The observations already noted and issues I will present later suggest to me that the language of the proposed legislation would put further emphasis on the isolation, independence and criminal aspects of OI investigations. Such emphasis would serve to make resolution of the management problems we now face even more difficult. More to the point, it would result in less safety. I am firmly convinced this need not happen. Better working relationships have recently been achieved between NRC and DOJ. Increased management attention to the underlying issues will foster increased understanding by OI and EDO staffs of each others' responsibilities and sharpen everyone's focus on the agency's

fundamental mandate to protect the health and safety of the public. This is a significant management challenge. Decreasing the Commission's management latitude, which I believe the proposed legislation with respect to OI will do, will only compound the problem. One final point in this regard: day to day safety oversight of facilities is an operational responsibility delegated to the EDO and staff offices. It is vital that safety issues investigated by OI be efficiently and effectively integrated into the day to day operations.

The reluctance of some employees to go to OIA for fear of retaliation and damage to their professional careers is not a new problem in this or other agencies. The Commission has put in place "open door" procedures, a differing professional opinion process, and has repeatedly informed employees of their right to go to OIA in confidence. The Rogovin report suggested an agency "ombudsman" for employees who wish to have their safety concerns pursued without risk to their professional career. If an independent IG could overcome the perception that "whistle blowing" is dangerous to one's career no matter how significant the safety concern the employee may have, I would endorse it without hesitation. Whatever mechanism is decided upon, however, should not excuse anyone (the IG, the employee, or line management) from ensuring that the agency's senior responsible safety officials are fully informed at the earliest opportunity of the management issues which could affect the safety mission of the agency.

The principal allegations concerning the EDO and his staff made by witnesses before this committee involved the agency's investigative function of licensee activities rather than its inspector general function. Even the allegations related to NRC employee misconduct were related to "interference" with the investigative function. Since the inception of the Atomic Energy Commission, through the creation of the NRC and continuing until the present, an important tool used to fulfill the Commission's paramount responsibility to protect the public health and safety has been the inspection of licensees and their activities. While inspections identify violations of regulatory requirements, thus enabling prompt and effective enforcement action, the single most

important purpose of inspections, whether or not a violation of requirements is identified, has been, is, and always will be the identification of safety issues so that appropriate actions can be taken to resolve them. The individuals who are best qualified to perform this important function have education, training, experience, and knowledge which is primarily technical in nature.

Historically, these technical inspectors occasionally encountered circumstances which involve wrongdoing and which could have affected safety. The technical inspectors, however, lacked investigatory training and competence to pursue deliberate licensee wrongdoing. Therefore, trained investigators were hired to assist the inspectors in performing the primary functions of identifying and resolving safety issues. As the number of licensees increased there was more frequent need for such assistance. This led to hiring more investigators and eventually to the creation of OI as a separate organization. More importantly, it was recognized that the quality and thoroughness of investigations needed substantial improvement. OI is comprised of individuals whose background, training, experience and interest is in perfecting criminal investigations. As professionals in that line of work, OI personnel are naturally oriented to obtaining information necessary to prosecute and convict individuals rather than being oriented to providing assistance in obtaining safety information for making regulatory decisions. I fully recognize the importance and deterrent effect that criminal investigations, referrals, prosecutions and convictions can have. I fully support that deterrence. I have consistently urged early referral of such matters to DOJ. However, in my view the primary mission of OI and its focus must be first on obtaining information to make regulatory decisions. That information can then be used to support the criminal process under the supervision and direction of DOJ.

Problems which developed between OI, and the EDO staff offices stem from a failure to accept the identification and correction of safety problems as the primary focus of this agency. That focus demands that OI and the EDO offices

work closely together and share whatever information there is which could affect safety decisions. Should OI fail to provide the staff with information needed to make safety judgments and decisions, the staff cannot effectively discharge its responsibilities. It should be noted in this regard that the director of OI is not authorized to take necessary actions to correct safety problems; rather, his responsibility is to relay any safety-related information to the staff promptly.

Many of the concerns raised by Mr. Hayes involve matters which predate actions taken by the Commission to reorganize and refocus agency offices on the safety mission. Earlier problems should not be mixed with whatever problems may exist today. If a safety issue is identified during an investigation, OI field investigators tend to provide the staff with such information promptly. For example, OI efforts have been helpful in achieving the safety mission of the agency in cases such as Radiation Technology, Wright Patterson Air Force Base, Bloomington Hospital, Mercy Hospital, Peach Bottom, American Testing, and Advanced Medical. The information from OI permitted the agency to act promptly, frequently without waiting for the completion of the investigation report. There are also examples of cases where the technical staff provided technical assistance to DOJ during its investigations and grand jury inquiries relating to cases referred to DOJ by OI such as: TMI, Zimmer, D.C. Cook, Advanced Medical and International Neutronics. Close working relationships in these cases proved effective in discharging the agency's safety mission and helped to foster a better understanding and appreciation of the functions of OI and staff. In contrast, when the results of an investigation were needed to decide what regulatory action was necessary, delays in the release of investigatory reports created tension and frustration for both OI and technical staff officers. In my view, the fundamental reason for this latter problem was the undue emphasis on independence of the investigative function. Examples of cases in which this occurred are Fermi, Sequoyah Fuels and the TMI Polar Crane issue. The OIA Comanche Peak investigation, as explained, was of special concern to me from a management perspective.

In my view, the agency's investigatory arm should not have its primary role defined as building a criminal case rather than developing safety information for those in the agency who need it to effectively discharge their duties. The Chairman has made it clear to the directors of OI, OIA and the EDO that each has responsibilities and sufficient latitude to do their respective jobs. Because the EDO offices have the responsibility to act on safety matters, my desire and that of my staff to be promptly informed may be viewed by OI and OIA as "pressure to complete an investigation". Such perceptions are unfortunate but may be inherent in the conflict between the desire to make prompt safety decisions and the need to conduct a thorough and complete investigation. I address this issue further in the Appendix. When management or safety information is involved, OI and OIA are clearly required to pursue such information on a priority basis in order to ensure that I receive it as soon as possible in order to act in an informed and timely manner.

Concentrating on any area of difficulty can have a tendency to exaggerate its significance. Such is the case, I believe, with the testimony before this Committee on the OI function - including my own comments. The fact is that we are well aware of the problem. The Commission and all of its senior management are committed to its resolution. Indeed, while we have made mistakes in the past, recent indications from the DOJ suggest that matters are getting better. When investigations are accomplished jointly with the technical staff, the results are readily accepted, regulatory action is accomplished promptly and feelings of contributing to the agency mission and job satisfaction are readily apparent.

DETAILED APPENDIX TO WRITTEN STATEMENT OF VICTOR STELLO, JR.
EXECUTIVE DIRECTOR FOR OPERATIONS

Testimony of witnesses presented by the Committee and its staff on April 9, 1987, asserted or suggested the following improper actions on my part or on the part of NRC staff reporting to me and for whom I am fully accountable and responsible. In general those witnesses have asserted that:

- I [we] are opposed to, or at least soft on, criminal prosecutions in the nuclear industry;

- I [we] engaged in actions designed to frustrate successful criminal prosecutions;

- I [we] are "too cozy" with the licensees we regulate as demonstrated by:

  - my telephone call with Mr. White of TVA

  - attempts to control OI's investigations

  - tipping licensees to OI investigations;

- I put pressure on OIA to complete an investigation.

I believe these charges, generally, reflect a misunderstanding of the agency's principal obligation to protect and promote public health and safety. For that reason and also because the charges impugn my personal reputation and performance, I have prepared this response for the record.

I am neither opposed to nor soft on criminal prosecutions. While the NRC has an obligation not to obstruct a DOJ criminal investigation, that obligation

does not include a presumed duty on the part of NRC to conduct criminal investigations either on its own or at the demand of DOJ for purposes unrelated to its safety mission. Therein is the problem, particularly because of the large backlog of pending OI investigations, the results of which are needed to resolve safety issues in a number of cases. Both Mr. Hayes and Mr. Greenspun have criminal investigator/prosecutor backgrounds. It is, perhaps, understandable that, given a lack of technical backgrounds, Mr. Hayes and Mr. Greenspun see things as they do.

The NRC is not primarily a criminal investigatory or prosecuting agency any more than are the agencies which regulate flight safety or food safety or mine safety. But, as is the case with those other agencies, occasionally in the course of carrying out our regulatory responsibilities, we run across conduct which could amount to criminal wrongdoing. When this occurs the matter should be referred to DOJ for appropriate disposition. It is not the function of this agency to attempt to "make" a criminal case for purposes of conviction. Nor is it our primary function to act as an agent of the DOJ and pursue a criminal investigation for that Department. We do, however, cooperate with DOJ and in appropriate cases provide resources to DOJ. Examples of such cooperation were cited earlier. It must be recognized that when we do this, it reduces the limited resources available to us for carrying out our mission of protecting public health and safety. Thus, we have fewer investigators and inspectors to pursue issues directly related to our health and safety mission. For this reason, we must exercise care in employing such resources only where the public health and safety benefits from successful prosecution warrant the resource expenditure.

Concerning the question of whether I took actions designed to frustrate successful criminal prosecutions, Mr. Greenspun addressed issues related to Three Mile Island and accused me of acting improperly regarding those issues. In doing so, he resurrected old issues which have been thoroughly investigated and resolved by both the FBI and a Federal Grand Jury. I could respond specifically to each of his charges, but I do not believe it is necessary. My

reading of the FBI report and my understanding of the Grand Jury's actions lead me to conclude that all of the issues investigated by the FBI and grand jury were resolved by finding no wrongdoing on my part by design or otherwise. I continue to be troubled by the fact that Mr. Greenspun, using his prosecutorial authority, could head an investigation into issues in which he was personally involved. I think his personal involvement is clear from his own testimony before this Committee. Certainly, his own conduct could have been an issue in such an investigation. I leave to others to judge the propriety and ethics of such behavior. I urge you, Mr. Chairman, to obtain a copy of the FBI Report No. 46A-11367, dated July 1, 1986 and examine it. I trust it will demonstrate to your satisfaction that these old charges were resolved contrary to Mr. Greenspun's personal biases.

Mr. Greenspun also stated that he personally requested that I not meet with a licensee under investigation, and that I subsequently engaged in a lengthy discussion with that licensee. He further stated that the meeting "unnecessarily derailed criminal prosecution," that I knew this would be the result, and that I and my deputy "confessed away the case." Having reviewed the documentation of events of over seven years ago, and after discussions with the other participants, I can state that Mr. Greenspun's interpretation is not correct. The particular case referred to involved an NRC licensee named Nuclear Pharmacy, Inc. (NPI).

When I received the proposed enforcement package from NRC Region III in the summer of 1979, it appeared to me that NPI had committed a very serious violation. The Region had cited NPI for shipping containers of Xenon gas, which were not designated as fit for human use, to various hospitals to be used on humans. Review of records indicate that I decided to substantially increase the civil penalty proposed by the Region. Also, I believe my staff and I considered revocation of the license. In June of 1979 as the then Director of the then Office of Inspection and Enforcement (OIE), I referred the case to the NRC Office of Inspector and Auditor (OIA) for possible referral to DOJ, but retained the right to continue investigating health and safety

implications. The notice of proposed civil penalties was sent to the licensee in August. The licensee responded vigorously, insisting that there were no health and safety problems and that, given the wording of its license, its actions might not constitute a violation.

During the fall of 1979, numerous meetings were held with FDA and others. As these meetings progressed it began to look as though NPI's actions were less serious than originally believed. Nevertheless, in October of 1979 OIA had referred the NPI case to DOJ. At that point NRC lawyers were in touch with DOJ. At no time did the lawyers from DOJ indicate that the NRC should refrain from contacting the licensee. Within this time frame, we considered using a form of consent decree in which the licensee would admit culpability. By the end of 1979 it became evident that NPI would not agree to the type of language in the consent decree that I deemed necessary. As a result, NPI was informed that no settlement would be forthcoming.

NPI thereupon requested one final meeting to present their side of the case. This meeting took place on January 21, 1980, and is the one referred to by Mr. Greenspun. Its only purpose was to hear whether NPI had any new information; not to make any concessions on the part of the NRC. Where the public health and safety is concerned, I believe it is my duty to elicit as much information as possible. During the meeting, NPI reiterated its previous arguments. No statements were made by either me or my staff that could be construed as weakening the case against NPI. Subsequent to that meeting I was informed that Mr. Greenspun had taken the position that there should be no contact between the NRC and NPI, and that the meeting had compromised the DOJ case. I do not agree with Mr. Greenspun's interpretation. In a letter dated November 20, 1981, from Mr. Greenspun to the attorney for NPI, he stated that DOJ had decided to defer prosecution, and that the decision "is substantially based on NPI's representation that it has rectified the activities in question and will continue to comply with NRC rules and regulations". In February of 1982, the NRC Staff imposed its civil penalty on NPI.

Another case cited by Mr. Greenspun (Tr. 129) concerns the now abandoned Zimmer facility. He states: "For years NRC inspectors were finding serious problems at the Zimmer plant in their inspections, and were told by the regional office in Chicago not to write it up and in reports but to keep a little notebook of violations he was finding. So, if the inspector got hit by a truck, nobody would know about the violations." This is a new allegation. Current Region III personnel who were closely associated with the NRC inspection of Zimmer during the late 70s and early 80s know of no such allegation or occurrence. Had such an allegation been made to Region III, it would have been referred to OIA. Had such a practice been identified, it would have been corrected.

Mr. Greenspun also alleges that "This plant was about to open, the Zimmer plant, shortly, but for a whistleblower by the name of Applegate, who twice had to go to the NRC after they did a couple whitewash investigations." At the time of the Applegate allegations, construction of the Zimmer plant was not complete and preoperational testing of the plant was in the earliest stages. Hence, the plant was not ready to start operations. The Region III investigators initially reviewed all of Mr. Applegate's allegations and concluded that three warranted NRC investigations. The other allegations concerned matters which were thought to be more properly addressed by other regulatory bodies. The results are documented in Investigation Report No. 50-358/80-09. In the second investigation, the NRC inspectors and investigators looked at all 19 Applegate allegations, four allegations made by quality control inspectors, three allegations received through site interviews, in addition to other areas of NRC concern. The results of the second investigation are documented in Investigation Report No. 50-358/81-13 and resulted in a $200,000 civil penalty against Cincinnati Gas and Electric Company, the licensee, and led to the NRC requiring major corrective action programs and a verification of the quality of completed construction. In retrospect, receipt of the allegations which prompted the second investigation perhaps should have led to the staff's identification of the significant breakdown of QA activities.

Finally, Mr. Greenspun concludes: "So you had a plant that would have opened that was eventually found, the Zimmer plant, to be so unsafe -- once they were publicly exposed, were found so unsafe that they could not allow it to open. But for a whistleblower, that wouldn't have happened and it could have opened." Although Investigation Report 50-358/81-13 documents many problems, the report did not reach the conclusion that the plant was unsafe. These findings, subsequent NRC findings, and licensee inspection findings raised sufficient quality questions that the NRC required the licensee to submit a plan to verify the quality of construction of the plant. Before this plan could be completely carried out, the licensee terminated construction of the nuclear facility with the intention of converting it to a coal fired plant.

In addressing the charges concerning whether my staff or I are "too cozy" with the licensees we regulate, it is necessary to understand that by necessity the technical safety staff and I have daily contact with licensee representatives. We also have daily contact with other members of the public with interest in the matters we regulate. The purpose of these contacts is for the exchange of information. When licensees have questions concerning NRC policy or rules, they do not have to speculate but are perfectly free to pick up the phone, call an appropriate NRC official and request information. To suggest that such contacts are inappropriate reflects a misunderstanding of a public official's duty to be responsive. In fairness one could criticize the staff for being too concerned over the regulatory action needed to correct problems. This in fact was one of the concerns expressed by the OI staff during the meeting I mentioned at the hearing. (Tr. 169-70). In this regard it is of interest that Chapter IV on Safety Management of the Ropovin Report (p. 1241), recommends that NRC announce as a matter of policy "that prosecutorial discretion will be exercised to effect a meaningful balance between enforcement of rules to ensure their accomplishment and yet encourage close cooperation with industry in communications to prevent accidents."

During early 1986 we were also being criticized for not being aggressive enough in identifying issues that needed to be resolved specifically on our

review of the TVA issues. This is an especially difficult issue. If the staff recognizes actions that can be taken to resolve a regulatory concern, should such actions be identified? This is compounded further when the basis for action is derived from an ongoing investigation. Frequently this also involves one or more specific individuals, the disclosure of whose identity could have the potential for interfering with an investigation or prosecution and therefore precludes the staff from identifying these individuals to the licensee. We are then faced with a difficult choice -- keep a facility shut down for months or as long as it takes to complete the investigation and DOJ review when applicable, or risk compromising the investigation by removing and thus disclosing the problem individuals. If DOJ were to prosecute the case the shutdown may extend for years. It is my belief that the public interest is best served when we aggressively resolve regulatory issues. I also believe this is what Congress intended but I recognize it contributes to the unfounded accusation of being "too cozy" with licensees.

We are currently working with DOJ on a memorandum of understanding to structure such discussions to further the statutory missions of both agencies. The proposed legislation involving an independent OI will serve to further distance its investigation efforts from the technical staff responsible for safety. It is in fact important that OI and the staff work together to first identify and correct the safety problems and, by so doing, to assure that facilities can be restored to operation and public service. For example, we frequently attempt to correct safety problems at hospitals or firms serving hospitals through use of our enforcement sanctions, in order that the practice of nuclear medicine can be resumed in the public interest. Examples are Mercy Hospital, Valley Radiological Clinic, Advanced Medical Systems, Bloomington Hospital, and Lakeview Hospital.

During the hearing there were two basic issues related to a phone call between myself and Mr. Steve White of TVA. (As in this case, I routinely return phone calls in the presence of senior staff.) The first issue deals with the adequacy of the OIA investigative process itself in which I had no involvement

other than being interviewed and therefore have no comment. The second issue relates to Mr. Hayes' characterization of the phone call as improper. In contrast, the OIA conclusion regarding this matter as stated in the report dated August 28, 1986, is: "There was no information developed during this investigation to substantiate any impropriety on the part of STELLO during his telephone conversation with WHITE..."

Mr. Hayes' concern over this matter was, as noted in the OIA report, "in light of the fact that we already had an ongoing material false statement investigation." The existing investigation he mentioned in testimony relates to the prior senior TVA nuclear manager attesting to Watts Bar Unit 1 readiness for fuel load in April 1985. That investigation deals with the state of that manager's knowledge of the plant at that time. Subsequent to that, many employee allegations and TVA inspections have indicated that potential quality problems exist at Watts Bar. In fact, the NRC staff's letter to TVA in January 1986 questioning compliance with Appendix B at Watts Bar was based on the work of TVA's own Nuclear Safety Review Staff. Thus, these matters arose subsequent to the April 1985 letter and were not a part of the ongoing OI investigation referred to by Mr. Hayes. Clearly, the telephone call from Mr. White was not related to the investigation of the prior senior TVA nuclear manager. To suggest otherwise would imply the entire NRC review of TVA problems is likewise related to the ongoing investigation of the TVA's April 1985 letter on Watts Bar.

Specifically, now referring to my sworn deposition taken relative to this matter dated July 30, 1986, I identify at least two telephone conversations related to Appendix B issues. In one conversation I indicated to Mr. White that he ought to finish his job and then respond to the letter. Mr. White indicated that he made the commitment to respond by a specific date and would do so. As the facts related to this matter show, Mr. White did in fact respond on March 20, 1986. Mr. White had taken over the leadership of TVA in January 1986 and was therefore on the job only a relatively short time. My concern was that he should have taken the time to understand the overall

status of Q/A problems at TVA before responding. Apparently, he felt constrained by the commitment to respond in a certain timeframe. In fact, conversing on technical issues is part of my job and indeed that of the NRC staff -- as long as the matter itself is not under investigation. As previously stated, this matter was not under investigation. For cases under investigation, we have procedures which cover how such discussions are to be conducted to assure safety issues are resolved while not prejudicing ongoing investigatory activity.

A second conversation with Mr. White concerned the need to assure that he needed to continue to pursue Appendix B issues and to inform the NRC of any significant problems identified related to the Appendix B issue. Indeed our regulations require such activities as discussed during the conversation. By the way of background, I knew Mr. White's previous experience was with the nuclear navy program, which is not governed by the code of Federal regulations used for commercial nuclear facilities.

In summary, both my conversations with Mr. White of TVA, only one of which has been the subject of criticism by Mr. Hayes and about which two of my senior staff members felt "uncomfortable":

- were initiated by Mr. White;
- transmitted no substantive information to Mr. White;
- centered upon emphasizing the needs of the NRC for full and complete information; and
- were in the interest of the regulatory functions of this agency.

In those circumstances I did not then and do not now see anything approaching impropriety in the conversation. Indeed, the sort of contacts with licensees and others which are not appropriate have been set forth in a set of

guidelines I have proposed to be added to those which already have been adopted by the Commission. Those guidelines do cover such matters as staff review of draft responses to enforcement related documents but they cannot be reasonably construed to cover telephonic admonitions to provide the NRC with the fullest and most complete information available -- the sum and substance of my conversations with Mr. White.

As discussed in part earlier, Mr. Hayes must view my demand to be informed about safety information in his possession and to have investigations with significant safety implications pursued on a priority basis as "attempts to control OI's investigations". The Investigation Referral Board (IRB) was established not to control OI but as a management tool to assure that matters referred to OI for investigation met the dual threshold test established by the Commission of (1) a reasonable basis to believe that wrongdoing occurred, i.e., the violation at issue appears more likely to have been intentional or to have resulted from careless disregard or reckless indifference than from error or oversight, and (2) there is a regulatory need for an investigation. The first threshold is important to differentiate what cases should be handled by the staff inspection process in contrast to the investigation process. The second threshold is important because in some cases there may be sufficient evidence available to make a regulatory decision without the need for an investigation.

In making its recommendations the IRB considers the various perspectives and views of senior managers in the offices of NRR, NMSS, EDO, IE, and OGC. OI was invited to participate in the IRB deliberations because they would offer insight on wrongdoing issues and perspectives on what matters need to be investigated. However, while they were given notice of meetings, OI chose not to participate in IRB activities. Nevertheless, OI is given a copy of each case that the IRB considers as well as a copy of the decision of the IRB. This preserves OI's option to self-initiate an investigation if it believes one is appropriate.

It should be noted that the IRB serves in a advisory role. In an emergency, regional administrator can initiate an investigation without first consulting the IRB. In addition, if not satisfied with the views of the IRB, a regional administrator may refer a case to OI anyway, after discussions with the Executive Director for Operations.

Another important function of the IRB was to establish a national priority of cases for OI investigation based on regulatory significance and need. The Commission has established guidance for establishing priorities for investigations. However, with five regional offices, many different types of licensees with differing potential hazards, and guidance which by necessity is broad, it is difficult to establish uniform priorities. Recognizing that, regions may have issues of varying importance (for example, a high priority in region X may be a normal priority in region Y), it was important to establish a national priority listing to assure that the agency's investigatory resources were being focused on the most important safety issues. The IRB with the assistance of senior managers from the regions established a national listing which is expected to be updated periodically.

In response to the concern about the change in the referral rate since the IRB, a tabulation of regional requests for investigations by month was developed. A formal OI referral process was instituted by the EDO in the summer of 1985 requiring written requests. Consequently, there is a paucity of records prior to this time period. Based on our statistics the regions showed the following number of cases referred to OI for the 14½ month period prior to the IRB:

I	II	III	IV	V	
14	31	10	15	17	TOTAL (87)

Prior to the IRB, during the 9/85 to 11/10/86 timeframe nationwide there were 87 regional referrals; this number is equivalent to 72 referrals on an

annualized basis. A breakdown of the historical numbers shows that the TVA cases have had an impact in that Region II has essentially twice as many referrals as any other region. Of the 31 cases in Region II, 22 dealt with TVA. Putting the TVA cases aside, it leaves an annual rate of 54 cases. Similarly, it is of interest to note that in the 5½ month period before the formation of the IRB, both Regions I and III had only two referrals each. After formation of the IRB, Region I had two cases referred to OI and Region III had five cases referred to OI.

For the five month period of the IRB examined herein (11/10/86 to 4/9/87, the regions have submitted a total of 25 requests, two of which were sent directly to OI in accordance with emergency referral provisions. The cases identified by the regions during the five month interval are :

I	II	III	IV	V	
2	5	5	10	3	TOTAL (25)

However, there is a unique situation in Region IV that warrants special consideration. In response to OI, the region classified one request as eight individual referrals since eight different dockets were involved. One could view, as the Region IV originally did, that this should be counted as one request. This affects the statistical comparison since the volume during the 5-month period could be viewed as 17 requests. The 25 cases identified by the regions are equivalent to 60 on an annual basis; adjusting for the above noted anomaly equates to about 40 cases annually, as compared to the previous year's annual rate of 54 cases when TVA is excluded.

However, the rate at which regions identify possible cases is not indicative of what is formally transferred to OI. Although OI has been provided copies of all submittals to the IRB, not all cases receive IRB approval; notwithstanding, experience has shown that the regions have accepted the IRB recommendations in all cases. Consequently, 13 cases have been referred to

OI; two of which have been emergency referrals. This volume is equivalent to about 30 referrals on an annualized basis. This reflects a decrease of about one-half from what has been experienced historically. However, the cases reviewed by the IRB have undergone a more thorough screening for completeness and prioritization such that they should not be rejected or denied by OI, as has been done on occasion before the inception of the IRB. As an example, four of the six requests made by Region II in May 1986 were denied by OI. From 9/85 to the establishment of the IRB 55 of the 87 cases referred to OI were treated as inquiries to determine whether a formal investigation should be made. Thus, less than a third (22) were treated as formal investigations.

Based on five months of IRB data it is difficult to draw statistical conclusions that there is a dramatic decline in regional referrals. For example, Region I had referred only two requests to OI in the five months interval prior to the inception of the IRB. In the five month period since the IRB was established, Region I has had two requests forwarded to OI through the IRB. However, the IRB in reviewing cases against the Commission's thresholds have reduced the number of cases referred to OI by about 50%. Cases were rejected for referral because there was not a belief that wrongdoing occurred, investigations were not necessary to permit appropriate regulatory action, or because OI was actively pursuing the matter such that a referral was not necessary.

In sum the IRB has not had a chilling effect on the number of cases identified by the regions. Cases are not hidden. Rather, the cases are being considered in a professional manner. OI is made aware of each action and invited to participate. The IRB is still in its six month trial period and appears to be serving the management function it was intended to serve. However, the staff is in the process of determining whether the IRB should continue past the trial period.

Mr. Hayes' adoption of Commissioner Asselstine's comment that the IRB appears to be a "...thinly veiled attempt by the EDO to control OI by controlling what

referrals are made and thus what OI "investigates" is yet another example where there is failure (1) to understand the real purpose of OI investigations and (2) to appreciate the management problems within the agency. Mr. Hayes reluctance to participate in the IRB process is another lost opportunity that could have fostered better communications with the staff, thereby improving relationships. Perhaps more importantly, the real purpose of the IRB -- to function as a management tool to assist both OI and the staff -- could have been more effective. It is indeed disturbing that Mr. Hayes does not see the need for investigations as derived from staff needs. In fact it is the staff who identifies the need for investigations. If there is not a regulatory need (safety), should an investigation be conducted? This should be a rhetorical question; unfortunately it is not. Answering this question and assigning priorities is a legitimate management activity, the fundamental reason for the IRB. I indicated during the hearing (Tr. 169, 184-5) my surprise that any manager could harbor the ill feelings Mr. Hayes did for apparently as long as he has. A manager should recognize the conflict and arrange a meeting to discuss and resolve the issue. If it could not be resolved it should have been escalated. I also noted during the hearing two meetings I arranged with Mr. Hayes' senior staff to discuss issues. I invite Mr. Hayes to our periodic meetings to interact with my senior staff. It is difficult to resolve differences and manage conflict without cooperation. In all candor, I cannot recall a single instance during my tenure as EDO (15 months) when Mr. Hayes has made an effort to resolve these conflicts. I find this to be a disappointing management attitude, which must be overcome to resolve the conflicts. The purpose in providing the foregoing information is to clarify the difficult nature of the management problem. However, it does not change my resolve to continue in whatever way I can to improve working relationships to an acceptable level. I intend to continue my monthly meetings with Mr. Hayes and expect Mr. Hayes will participate in our next senior staff meeting in June. Furthermore, I will look for additional opportunities to foster enhanced communication and an improved working relationship.

Mr. Hayes cites the Milford Hospital case as an example of where a licensee was "tipped off" about an investigation because the technical staff tried to investigate rather than requesting that professional investigators, such as OI, conduct the investigation. The investigation for the Milford Hospital case is still pending, so I cannot discuss the details. In response to the "tipping off" claim, however, it is sufficient to note that during the course of a routine technical inspection at Milford Hospital, an NRC inspector, in the presence of the licensee's radiation safety officer, identified obvious, uncontested wrongdoing which was admitted by the licensee and the involved individuals and which, therefore, could not, by definition involve "tipping". OI was not requested to conduct an investigation because the charge was already substantiated by the licensee's admission to NRC technical personnel.

Concerning Mr. Mulley's testimony on pressure on OIA concerning the ongoing safety issues surrounding Comanche Peak, on November 26, 1986, OIA issued its Report of Investigation 86-10 addressing allegations of Region IV management wrongdoing relative to inspection activities at Comanche Peak. I will summarize my activities with regard to issues related to that OIA Report.

About March 19, 1986 I was informed that OIA had commenced an investigation addressing allegations of Region IV management wrongdoing relative to Comanche Peak inspection activities. Based on that, the Director OIA and I reached agreement that Region IV would cease further staff action to resolve the inspection issues in contention. In addition, I made arrangements that subsequent inspection findings of Mr. Phillips, the involved Resident Inspector, would be reviewed by Headquarters staff and management rather than the involved Region IV managers.

For about 4 or 5 months OIA continued their investigative work. I became increasingly aware of the negative impact it was having on the morale and effectiveness of both staff and management in Region IV. I became increasingly concerned that the investigation was detracting Region IV personnel from performing their basic job of protecting public health and safety. Some of

the managers for Comanche Peak activities also have responsibilities covering the seven operating nuclear stations in their Region.

In the early summer of 1986, I met with Mrs. Connelly and Mr. Mulley. I expressed my concerns to get the investigation completed. I offered staff assistance to OIA and asked if there were anything else I could do to help them conclude their work. At that time, I was informed the report might be finished in August. In fact, the report was not finished until November.

Mr. Mulley chose in his testimony to characterize my actions as pressure. Frankly, I think I was only doing my job as the responsible staff manager considering the negative morale impacts the OIA work was having in the Region. Further, in a personal sense, I kept a humane balance. Upon hearing in late July from Mr. Mulley that a member of his family was undergoing surgery, I strongly suggested that Mr. Mulley consider his priorities and take whatever time he needed.

It was also suggested by two witnesses that the OIA Report of Investigation 86-10 was indiscriminately distributed throughout the agency. In reference to a December 4, 1986 Commission directive to take action as a result of the Report, the Report was initially distributed to only a limited number of senior staff management officials and selected staff members who were charged with the task of reviewing the Report and its very voluminous attachments in a short timeframe for the purpose of assessing:

(1) whether the Report identified any issues that were of such a nature in terms of safety that immediate action was called for;

(2) whether the Report identified any grounds for immediately initiating any personnel actions;

(3) whether the Report could be released to the public in its entirety or whether deletions were necessary in order to prevent unwarranted

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invasions of personal privacy, to preserve the NRC's ability to effectively inspect or investigate any matters identified or refer matters to the Department of Justice for action, or otherwise to preserve the ability of the NRC to act on the Report's findings (i.e., were predecisional); and,

(4) what bearing the Report might have in the ongoing licensing proceeding related to the application for operating licenses for Comanche Peak.

Very shortly after the initial limited distribution, I requested and obtained the Commission's approval to provide copies of the Report and its attachments to six named Region IV staff members who were central to the OIA investigation. I did this for two reasons: first, out of concerns of fairness, to permit these persons to have accurate information concerning the Report prior to its release so that they could knowledgeably deal with the anticipated public inquiries that would most likely follow any public release of the document; and, second, so that management could discuss the Report with them in addressing the issues stated above.

On December 11, 1986, the Commission approved the public release of a redacted version of the Report, with the names of all individuals and certain other information potentially relevant to the conduct of an investigation deleted.

I considered the allegations to be very serious and, with the approval of the Commission, I established the Comanche Peak Report Review Group (CPRRG) and charged it with conducting a comprehensive review of the issues raised in the Report and making recommendations to address the issues. I gave the Chairman of the CPRRG special authority to draw upon whatever staff or consulting resources were necessary or appropriate to comprehensively address the issues. Extensive efforts by senior management and other staff personnel resulted in the CPRRG Report dated March 12, 1987. On April 14, 1987, I transmitted to the Commission my recommendations and proposed actions, and on April 16th, I

briefed the Commission and requested its approval to implement the recommended actions. I also urged prompt release to the public of the OIA Report, the CPRRG Report and my April 14th recommendations. Because this matter is still pending with the Commission, I cannot discuss the details further. I can assure you, however, that the issues raised by the OIA Report have received the closest scrutiny and will be the subject of appropriate action as approved by the Commission.

. . . .

UNITED STATES
NUCLEAR REGULATORY COMMISSION
Office of Governmental and Public Affairs
Washington, D.C. 20555

No. 88-46
Tel. 301/492-0240

FOR IMMEDIATE RELEASE
(Monday, April 25, 1988)

SPECIAL INQUIRY ON NRC MATTERS COMPLETED

Nuclear Regulatory Commission Chairman Lando W. Zech, Jr., announced today that the NRC has received a report from David C. Williams of the General Accounting Office concerning a special inquiry conducted by Mr. Williams into three internal matters of concern to NRC and the Congress. Mr. Williams, head of GAO's Office of Special Investigations, conducted the independent inquiry at the request of the Commission. His report was made public today by the NRC.

In releasing the report, Chairman Zech said:

"David Williams has performed an important service to the Commission. I agree with his comment that the important mission and critical safety role of the NRC require that it possess a first-rate investigative capability with resources that will assure the NRC's ability to perform its function in a professional, competent manner. I am pleased that Mr. Williams' investigation found that the evidence does not support the allegation of improper discussions between the Executive Director for Operations and an official of TVA. I also am pleased that no evidence was developed to indicate that substantive changes were made in the Office of Inspector and Auditor investigative report on the Comanche Peak matter during the review and editing stage. The Williams report recognizes that we already have reviewed the policies and procedures for handling allegations involving Commissioners and their offices. The Commission will give careful consideration to Mr. Williams' entire report in our continuing efforts to assure that we carry out our investigative responsibilities fairly and efficiently."

Mr. Williams' inquiry at NRC focused on the adequacy of an Office of Inspector and Auditor (OIA) investigation of allegations of staff misconduct involving the Comanche Peak plant under construction in Texas; the adequacy of an OIA investigation of allegations of improper communication between Victor Stello, NRC Executive Director for Operations, and Steven White of the Tennessee Valley Authority; and the circumstances under which Mid-South Utilities obtained an internal NRC document that appears to have come from the files of Commissioner Thomas Roberts' office, and the subsequent handling of that matter.

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United States General Accounting Office

GAO

SPECIAL REPORT

Office of Special Investigations

NOTICE: Further release of this document may not be in the best interests of the government for reasons stated herein.

AO

United States
General Accounting Office
Washington, D.C. 20548

Office of Special Investigations

April 22, 1988

The Honorable Lando W. Zech, Jr.
Chairman
Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Chairman:

The U.S. General Accounting Office, Office of Special Investigations, has investigated three matters bearing on the adequacy of the Nuclear Regulatory Commission's (NRC) investigative proceedings and practices. Enclosed is our statement of findings.

We have provided this report to the requestors: Chairman Morris K. Udall, Subcommittee on Energy and the Environment, House Committee on Interior and Insular Affairs; Chairman John D. Dingell, Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce; Chairman Philip R. Sharp, Subcommittee on Energy and Power, House Committee on Energy and Commerce; and Congressman Edward J. Markey, Committee on Energy and Commerce, and Committee on Interior and Insular Affairs.

As agreed by our requestors, we are providing a copy of the report to you as the Chairman of the NRC.

Should you have any questions regarding the content of this report, please contact me at (202) 272-5500.

Sincerely yours,

David C. Williams
David C. Williams
Director

Enclosure

On June 22, 1987, four members of the U.S. House of Representatives requested that the U.S. General Accounting Office (GAO), Office of Special Investigations, investigate three matters bearing on the adequacy of the Nuclear Regulatory Commission's (NRC) investigative proceedings and practices. Specifically, these members, Congressmen Morris K. Udall, Edward J. Markey, Philip R. Sharp, and John D. Dingell, asked that GAO do the following:

-- Ascertain if the NRC Office of Inspector and Auditor (OIA) properly investigated and accurately reported on allegations relating to the inspection program at the Comanche Peak Steam Electric Station (CPSES). An NRC inspector at that Texas facility charged that he had been harassed, intimidated, and pressured by his superiors to alter or delete findings from his reports.

-- Evaluate the thoroughness of OIA's investigation of an allegedly improper discussion between the NRC's Executive Director for Operations (EDO) and an official of the Tennessee Valley Authority (TVA). The discussion concerned a major NRC enforcement initiative focused on TVA.

-- Determine if the NRC properly handled the question of whether a regulated utility had uncontrolled access to internal NRC documents. These documents concerned defects in a Louisiana nuclear plant and were found in the possession of the utility licensed to construct that plant.

In follow-up meetings with the requestors, GAO was asked to expand the scope of the work as necessary. Therefore, GAO reinvestigated certain portions of each of the three matters.

In summary, we have concluded on the basis of our investigation that the evidence does not support the allegations concerning the inspector at CPSES or the allegation of improper discussions between the EDO at the NRC and an official of TVA. However, as discussed in detail below, our work revealed a number of serious deficiencies in the conduct of these investigations by the NRC. We have concluded that the allegation concerning access by a regulated utility to internal NRC documents was also improperly handled.

BACKGROUND

The NRC is responsible for licensing and regulating nuclear facilities and materials, and for conducting research in support of the licensing and regulatory process, as mandated by the Atomic Energy Act of 1954, as amended. OIA is the internal investigative arm of the NRC and is charged with investigating misconduct by NRC employees and verifying the adequacy of NRC operations.

On April 9, 1987, during a hearing conducted by the Senate Committee on Governmental Affairs concerning the need to legislate an independent NRC inspector general, allegations surfaced that reflected on the adequacy of the NRC's internal investigative processes. After the Senate hearings, the NRC Chairman, Lando W. Zech, Jr., and four members of the U.S. House of Representatives called for an independent review of the allegations.

In response to the Congressmen's request, in July 1987 GAO initiated an investigation of the three cases. This report includes the histories of the three incidents, the NRC's handling of the matters, and GAO's investigative analysis of the NRC's disposition of the matters.

METHODOLOGY

GAO's investigation included a review of the following:

- the NRC's policy documents, applicable laws, regulations, and standards;
- relevant NRC investigative reports;
- thousands of pages of transcribed interviews and congressional testimony that related to the three matters;
- relevant OIA case files;
- pertinent NRC correspondence with various congressional committees; and
- other related documents, such as the report prepared by the Comanche Peak Report Review Group.

GAO supplemented its evaluation of documents with interviews of individuals involved in the three matters.

CASE 1: COMANCHE PEAK STEAM ELECTRIC STATION

Results in Brief

Although OIA's report might have reached the proper conclusion with respect to allegations of harassment and intimidation of NRC Inspector Shannon Phillips, GAO found serious problems with OIA's investigative processes. Phillips' allegations called into question the handling of inspection findings by NRC Region IV managers. Among other things, GAO found that OIA did not interview several witnesses who could have added a needed perspective to Phillips' allegations. Furthermore, GAO found insufficient evidence to support the OIA investigator's claims that NRC managers interfered with the conduct of the OIA investigation or that the results were incorrectly reported.

Background

In March 1986, Shannon Phillips, an employee of NRC Region IV in Texas, telephoned NRC Commissioner James Asselstine and outlined allegations concerning Region IV's management of its inspection program at the Comanche Peak Steam Electric Station. Phillips serves as the Senior Resident Inspector for Construction at CPSES. Asselstine referred the allegations to the acting Director of OIA, Gary Eddles, and expressed concern that Phillips' allegations were serious and warranted attention. (OIA's Director, Sharon Connelly, was on administrative leave pending completion of an investigation of her conduct in the handling of an unrelated matter. Connelly returned to her duties as head of OIA on March 28, 1986.) In agreement with Asselstine, Eddles assigned OIA Investigator George Mulley to conduct the inquiry. Additionally, he agreed that all interviews would be conducted under oath and be transcribed.

On March 19, 1986, Mulley interviewed Shannon Phillips under oath. In the interview, Phillips made the following allegations:

-- In January 1986, his Region IV supervisor, Thomas Westerman, made a statement about Inspection Report 84-32/11 that Phillips considered threatening.

-- Westerman directed him to delete from draft Inspection Report 85-07/05 any reference to an inspection trend analysis that Phillips had performed at the direction of his former supervisor. The analysis was a computation of data relating to the frequency of unresolved quality assurance issues.

-- Westerman had harassed and pressured him and another inspector to change or delete findings in draft Inspection Report 85-07/05.

-- Region IV's data on NRC Form 766, Inspector's Report, was inaccurate. The 766 program is an information management system designed to capture, maintain, and report statistical and planning data concerning inspection and enforcement activities.

-- Westerman made improper statements for a regulator.

-- Westerman directed him to destroy drafts of Inspection Reports 85-07/05 and 85-13/09 because a Freedom of Information Act request had been received.

-- Westerman had pressured and harassed him over technical differences on draft Inspection Report 85-14/11.

-- Westerman improperly handled the allegations of a consultant group working for the utility.

-- Westerman had pressured, harassed, and intimidated him to change draft Inspection Report 85-16/13.

-- Eric Johnson, a Region IV manager, criticized him for how he had written a memorandum concerning possible wrongdoing relating to fire seals.

-- Johnson told the Senior Resident Inspector at the Fort St. Vrain facility in Region IV not to write certain violations and to downgrade others.

Phillips further claimed that his disagreement with Region IV management's handling of his allegations resulted in his being harassed, intimidated, and isolated by Region IV management.

Between March 19, 1986, and November 26, 1986, Mulley, with the assistance of technical and support staff, investigated the allegations and prepared a 47-page report with attachments detailing the findings. The report, entitled Allegations of Misconduct by Region IV Management With Respect to the Comanche Peak Steam Electric Station, was issued on November 26, 1986, as OIA Report 86-10. The report concerned the allegations made by Phillips and was divided into the following three issues:

(1) Did Region IV management harass and intimidate inspectors to pressure them to downgrade or delete proposed inspection findings at CPSES?

(2) Was the Region IV Quality Assurance Inspection Program at CPSES inadequate?

(3) Was data documented in Region IV's NRC Form 766, Inspector's Report, inaccurate?

In reference to the first allegation, the OIA report concluded that Phillips' findings were downgraded or deleted from draft inspection reports and that these changes were made at the direction of Region IV management. Mulley's technical advisors questioned the actions taken by Region IV management regarding certain inspection findings; however, OIA's investigation failed to substantiate that the Region IV supervisor, Westerman, intentionally harassed or threatened Phillips in connection with these findings.

The OIA report generally concluded that the second and third allegations were accurate, and reviews performed by the technical assistants were used to buttress OIA's conclusions.

OIA Report 86-10 had considerable impact on the NRC. In response, in January 1987 the Commission approved the formation of a special review group comprised of senior NRC officials to address the specific issues raised in the OIA report. This review group, the Comanche Peak Report Review Group, issued its report on March 12, 1987, which reflected the following conclusions:

-- None of the draft findings that had been downgraded or deleted were significant in terms of any direct adverse impact on plant safety.

-- Region IV management acted appropriately in downgrading or deleting some of the inspectors' 34 draft findings; however, part of the problem could have resulted from the inspectors' failure to fully develop the issues of concern. Regional management should have provided the inspectors with guidance to properly focus and develop these items, rather than deleting them.

-- There were previous gaps in the Region IV Comanche Peak Quality Assurance Inspection Program in relation to 1986 requirements, but the current augmented review and inspection effort at that location compensated for those gaps.

-- The Form 766 data base was not used in making safety decisions, and its accuracy, completeness, and timeliness were not adequate for many needs.

-- Some factors that came to light in the OIA investigation and its aftermath might have implications for other facilities.

On April 9, 1987, Mulley appeared before the Senate Committee on Governmental Affairs and testified concerning the conduct of the Comanche Peak investigation (OIA Report 86-10). In his testimony, Mulley asserted the following:

-- He limited the scope of the Comanche Peak investigation because of pressure from EDO Victor Stello and OIA Director Sharon Connelly.

-- His draft of the OIA report was modified by Connelly as follows:

- She removed the conclusion that Region IV managers acted inappropriately to limit violations assessed and that Phillips was harassed and intimidated in an effort to get him to downgrade or delete his inspection findings.

- She focused the report on the technical issues underlying the violations, an area outside the expertise of OIA.

- She removed quotations of Region IV personnel that substantiated the conclusions stated above and demonstrated the lax enforcement attitudes of Region IV management.

-- The decision to distribute the OIA report would make it extremely difficult to get NRC employees to cooperate in ongoing investigations.

-- Phillips tried to inform the NRC that Region IV demonstrated an attitude of trying to help the utility obtain an operating license for Comanche Peak.

On October 8, 1987, the Senate Committee on Environment and Public Works, Subcommittee on Nuclear Regulation, held hearings at which Mulley again testified with reference to the Comanche Peak case. At that hearing Mulley stated the following:

-- All of the facts and information developed during the investigation were in the report.

-- He disagreed with the OIA Director, Sharon Connelly, about the way in which the report was prepared, particularly the overemphasis on technical issues, an area in which OIA lacked expertise.

-- He was more interested in the treatment of Phillips than he was about the technical validity of the inspection findings.

-- He believed that Phillips had been harassed by Region IV management.

-- The staff of EDO Victor Stello was qualified to address technical issues and decide the validity thereof.

-- He disagreed with some of the changes Connelly made; however, he did not think that anything was wrong, illegal, or "immoral" about what she did. The report was different from the way he would have written it. Stello wanted the report out because he wanted a document with which to work. In an effort to respond to the EDO, Mulley started to put it together quickly. He decided there were certain issues that, at the time, did not need to be included in the report. No one attempted to alter the content of the report.

GAO's Investigative Analysis

GAO determined that OIA's investigation of allegations that NRC managers in Region IV mishandled findings proposed by NRC Inspector Shannon Phillips was accurate; however, the investigative processes used by OIA were questionable.

In support of the proposition that Phillips' findings had been improperly altered or deleted, OIA Investigator Mulley relied, in part, on statements by a former Region IV manager that Region IV management had a lax enforcement attitude. When interviewed by GAO, however, this same individual said that the OIA investigator misunderstood his meaning and that the point he was trying to make was that there were philosophical differences about how well developed a finding must be before it should be cited as a violation. Region IV managers Westerman and Johnson insisted that violations be cited only after the findings were fully developed and supportable, whereas some inspectors and managers believed in citing violations and placing the burden of proof on the utility to disprove them.

In contrast to his testimony of April 9, 1987, at the Senate Committee on Governmental Affairs hearing, Mulley told GAO that it was only his "opinion" that Phillips had been harassed and intimidated and that it might not have been done intentionally. Mulley could provide no direct support for his contention that Phillips had suffered harassment or intimidation. By failing to interview other Region IV supervisors, Mulley unintentionally skewed the harassment question. GAO interviewed other NRC personnel who provided a balancing perspective on Phillips' allegations and the proper oversight function of regional officials. Phillips stated he was being harassed and intimidated by his supervisors because his findings were critical of the utility. However, Phillips' supervisors advised that this was not the case. They stated Phillips failed to fully develop his findings and/or present them clearly in writing.

GAO's review indicated that Mulley was correct in asserting OIA should not have focused its report on the technical issues. Even with technical assistance, OIA lacked the expertise to resolve such issues in a competent fashion. If OIA found a need to challenge the technical judgments of Region IV management, it should have employed NRC's established procedure for resolution of differing professional opinions.

Finally, GAO was unable to verify Mulley's assertions that (1) he had been pressured to limit the scope and otherwise expedite completion of his investigation of the Phillips matter and (2) his draft report had been substantially altered by Connelly. Mulley testified before the Senate Committee on Environment and Public Works that although he might have disagreed with some of the changes to his report, he did not think there was anything wrong with the changes made by the OIA Director. Furthermore, Stello denied that he had applied undue pressure on Mulley concerning the report. GAO reviewed all available drafts of Mulley's report and interviewed the principals involved in the preparation, editing, review, and approval process. No evidence was developed to indicate that substantive changes were made during the review and editing stages.

With regard to the distribution of Mulley's report, GAO found no basis to question the conduct of the EDO who explained that the Commission authorized the distribution to assist NRC management in addressing important matters, such as health and safety issues requiring immediate action. Witnesses told GAO they were disturbed about the distribution of the report containing unredacted transcripts of their statements to high-level management officials and to the principal witnesses. However, none of the witnesses interviewed asserted that they had been subjected to reprisals. Moreover, none of the witnesses identified in the OIA report or transcripts asked for or received a pledge of confidentiality from anyone in OIA, and Mulley voiced no objection to the release.

CASE 2: IMPROPER TVA DISCUSSION

Results in Brief

GAO's investigation revealed that OIA did not thoroughly investigate an alleged improper discussion between an NRC official and an official of the Tennessee Valley Authority concerning a major NRC enforcement initiative focused on TVA. OIA inadequately planned its investigation and failed to interview one of the two parties to the conversation. GAO learned that key OIA personnel did not know the purpose of their investigation of this matter.

Although the conversation was investigated by OIA, the NRC does not prohibit or discourage such conversations. A report of such contacts is now required by NRC regulations; however, none was required at the time of this incident.

Background

On December 19, 1985, a member of TVA's Nuclear Safety Review Staff (NSRS) briefed NRC Commissioner James Asselstine on the condition of the Watts Bar Plant. NSRS' position contrasted sharply with the TVA's prior certification to the NRC that the plant was ready for fuel loading. In the briefing, NSRS listed several technical areas in which they believed deficiencies existed, which indicated to them fundamental weaknesses in the Watts Bar quality assurance program.

NSRS' perception that the plant was not ready for fuel loading prompted the NRC to request that TVA officially certify its position on NSRS' technical concerns. By letter dated January 3, 1986, the NRC's Office of Nuclear Reactor Regulation (NRR) requested that TVA certify its position on whether or not the quality assurance program met the criteria outlined in 10 CFR Part 50, Appendix B. The NRC's letter allowed 6 days for a sworn response and 30 days for "information on an item-by-item basis supporting the TVA corporate position." The Director of NRR, Harold Denton, subsequently agreed to extend the 6-day deadline. The extension was made to allow the TVA adequate time to consult with staff and because the new head of TVA's nuclear program, Steve White, would not report for duty until January 13, 1986. On March 20, 1986, White responded to Denton of NRR with TVA's position and addressed each of the issues underlying the NSRS perception. After White signed the letter and transmitted it for hand delivery by a TVA official, he determined a need to clarify one section of the letter. White contacted the courier while he was en route and directed him to go by TVA's Washington, D.C., office where the change was incorporated. The letter was subsequently delivered to the NRC.

On April 7, 1986, Ben Hayes, Director of the NRC's Office of Investigations (OI), informed then-NRC Chairman Nunzio Palladino that NRC's Executive Director for Operations, Victor Stello, had been overheard discussing TVA's response to Denton's letter with Steve White on or about the time that the TVA response was dispatched. OI is responsible for NRC investigations involving allegations of intentional violations of regulations by licensees, permittees, applicants, contractors, and vendors. At the Chairman's request, Hayes passed this information to the NRC's Director of OIA, Sharon Connelly. Hayes informed her that the Stello-White conversation had been overheard by Denton and the NRC's Director of Inspection and Enforcement, James Taylor.

OIA Director Connelly decided to investigate the matter and assigned the case to Keith Logan, then OIA's Assistant Director for Investigations. Logan interviewed Hayes on April 11, 1986. The transcript of the Hayes interview reveals the following points:

-- OI was investigating a possible material false statement made in February 1985 by TVA's former nuclear power program manager.

- -- In the course of OI's false statement investigation, Denton was interviewed and advised that on or about March 20, 1986, while he, Taylor, and Stello were together in an NRC vehicle, Stello had a telephone conversation with White about the 10 CFR Part 50, Appendix B, matter.
- -- Taylor, in a later discussion with Hayes, confirmed that the conversation had taken place and indicated that he was uncomfortable with the conversation.
- -- On April 7, 1986, Hayes advised Chairman Palladino about the Stello-White conversation.
- -- The Chairman indicated that he wanted Hayes to discuss the matter with Connelly of OIA.
- -- Hayes informed Commissioner Asselstine about the Stello-White conversation in the event the issue came up in the Commissioner's forthcoming visit to TVA.

Following Logan's interview of Hayes, nothing more occurred in the OIA investigation until June 6, 1986. On that date, Asselstine asked Connelly about the status of the investigation during a briefing she was making to the Commission on unrelated OIA activities. In response, Connelly erroneously stated that the witnesses to the conversation had been interviewed and that Stello would be interviewed within the next two weeks. Four days later, Connelly corrected the record to show that neither witness had been interviewed, the case had been reassigned to Investigator Anthony Ward, and the first of the witnesses would be interviewed on June 10, 1986.

Ward interviewed Denton on June 10, Taylor on June 16, and Stello on July 30, 1986. On August 26, 1986, Ward telephoned an attorney in the NRC's Office of General Counsel, Sebastian Aloot, and synopsized the results of the four OIA interviews. Aloot stated that, based on the facts as presented, there was no apparent conflict of interest or impropriety on the part of Stello.

Two days later, George Mulley, who in June 1986 had been appointed OIA's Assistant Director for Investigations, signed OIA Report 86-30, and Connelly transmitted it to the Commission. The report did not indicate that other NRC officials had similarly discussed TVA's Appendix B response with White. The report concluded, "There was no information developed during this inquiry to substantiate any impropriety on the part of Stello during his telephone conversation with White." The report was correct in its conclusion; however, OIA's method of having reached such a determination was questionable since they failed to interview the second party of the alleged improper conversation.

On April 8, 1987, Mulley, in preparation for his testimony at the Senate Committee on Governmental Affairs hearings, wrote a memorandum explaining why the investigation took as long as it did to complete and why, in reviewing the draft report, he saw no reason to interview Steve White. Mulley's memorandum stated that he was not involved with this investigation during the April to July 1986 time frame because of his preoccupation with the Comanche Peak and other investigations. Accordingly, the memorandum indicated, Mulley could not explain why the Stello-White investigation had taken so long to complete. The memorandum reported that Mulley reviewed the Stello-White report and "noted no conflict regarding the topic of the telephone conversation; the only point in dispute seemed to be the propriety of...(Stello's) actions." The memorandum further stated that "(Mulley) did not discern a need to interview (White)...because he would have provided no new significant information regarding (Stello's)...actions."

GAO's Investigative Analysis

GAO investigated the Stello-White telephone conversation to determine the propriety of the interaction between the principals and to evaluate the thoroughness of OIA's investigation of the matter. On March 14, 1988, the NRC's Office of Investigations issued a report entitled Watts Bar Nuclear Plant: Possible Willful Attempt by TVA Management to Mislead the NRC. OI's report concluded that White knowingly and willfully made a material false statement in his March 20, 1986, certification letter to the NRC. Because it was beyond the scope of the request made of GAO, GAO did not evaluate the OI investigation or report. However, GAO did review transcripts of OI interviews that were relevant to White's March 20, 1986, conversations with Stello and Denton.

GAO concluded that OIA's investigation of the alleged improper conversation between Stello and White was not sufficiently thorough. OIA failed to determine what it was investigating, e.g., there was inadequate effort devoted to determining the nature of what was said and the impact that the conversation had on the actions of either party. Furthermore, OIA failed to pursue the investigation in a timely and systematic manner. The investigation should not have been initiated without a proposed plan of action and specification of the rule, law, or regulation that might have been violated. This was evidenced during GAO's interviews of Ward, Mulley, and Connelly since not one of them could provide a convincing justification for their failure to interview White about the alleged improper conversation.

During GAO's interview of White, he denied having sought or obtained improper pre-approval for TVA's position. White stated that the purpose of his calls to NRC officials was to assure that TVA's letter was fully responsive to the NRC's request. White asserted that it was his discussion with Denton, not with Stello, that led him to make a clarification in TVA's response. White made contemporaneous notes of his conversations, which he provided to GAO. These notes, which were part of White's ongoing diary for this period, add credence to his version of what transpired in his conversations with NRC officials.

When interviewed, Stello and Denton's account of the events coincided with White's version of what transpired in the telephone calls of March 20, 1986. White asserted that he was not trying to discern if TVA's position was acceptable, but to assure himself that the letter was fully responsive to the NRC's request for information. White told GAO that his change to the letter did not reflect a substantive change in TVA's position, but only served to clarify a detail that Denton considered important. GAO was not able to develop any information indicating that Stello, Denton, or other NRC officials coached White on what position TVA should adopt to assure favorable action by the NRC. GAO learned in its interviews of Denton and Taylor that their discomfort with the Stello-White conversation was only because they felt White was going around them in dealing with Stello.

An NRC regulation (10 CFR 0735.49a) prohibits employee actions that might result in, or create the appearance of, giving preferential treatment to any person or making a government decision outside official channels. Under NRC policy applicable to the time frame in question, GAO believes that this regulation did not prohibit the type of discussions that apparently took place in this case. Until recently, the NRC policy with reference to this regulatory provision was permissive, as evidenced by the commentary of Chairman Zech on July 10, 1987, — wherein he stated "so long as it is understood that any staff discussions do not constitute the staff's formal judgment on the merits of any issue." He further stated in his commentary, "The agency views preliminary discussions and informal preliminary staff opinions as important ways to better understanding on the part of all concerned of the issues surrounding a potential request for regulatory action."

Accordingly, GAO's investigation substantiated that the Stello-White conversation did not contravene relevant NRC regulations as applied at the time in question.

CASE 3: LEAK OF NRC DOCUMENTS

Results in Brief

GAO concluded that the NRC did not properly address the issue of whether a regulated utility had access to its internal documents. Commissioner Roberts' investigation of the matter was very limited, but none of the Commissioners seemed to have had an appreciation of that fact. A significant factor explaining why the matter was not properly addressed was the failure of the NRC to refer the matter to OIA at the outset as required by NRC guidelines.

Background

On June 8, 1983, James Joosten, a technical assistant to then-NRC Commissioner Victor Gilinsky, sent Richard DeYoung, an NRC official, documentation that he had received from a free-lance reporter regarding alleged safety problems with a nuclear power plant in Louisiana. DeYoung served as Director of the NRC's Office of Inspection and Enforcement. The memorandum transmitting the documentation called attention to the reporter's concerns about cracks in the concrete under the containment vessel at the Louisiana Power and Light Company's (LPL) Waterford III plant. The materials included published articles written by the reporter that raised questions about possible collusion between LPL and NRC inspectors. Joosten's memorandum suggested DeYoung assure that the reporter's concerns be reviewed objectively. Joosten sent copies of his memorandum and attachments to Steve Chestnutt, technical adviser to Commissioner Thomas M. Roberts, and to other NRC officials. Copies of the Joosten memorandum were publicly released by NRC three months later pursuant to a Freedom of Information Act request.

In March 1985, OI Investigator Bill Ward, while working on an unrelated case, discovered a copy of the Joosten memorandum and attachments in an LPL file at the Waterford plant. Attached to the material was a cover memorandum dated June 15, 1983, from George White, a vice president of Middle South Utilities, the holding company for LPL. The White memorandum was addressed to John Cordaro, an executive of the company, and read as follows:

"Attached is a memorandum which I have received from sources inside the Nuclear Regulatory Commission regarding Waterford Quality Assurance matters. This memo is for your information but I would hope that you limit its distribution to protect the source within the NRC."

On March 13, 1985, after conferring with his staff on what to do about the discovery, OI Director Ben Hayes took a copy of the documents to then-NRC Chairman Palladino. Following a discussion with his legal advisor on what actions the discovery warranted, Palladino decided to make Commissioner Roberts aware of the matter. Palladino did so because the copy Hayes provided appeared to have been duplicated from Roberts' office file copy.

After obtaining the documents from Palladino, Roberts assembled his staff and asked each member if he or she had leaked the documents. Roberts tape-recorded the staff interview. During the taped interview, none of Roberts' staff acknowledged having given the documents to George White. After the meeting, Roberts' staff established that the Joosten memorandum had been released to the public on September 23, 1983, pursuant to a Freedom of Information Act request.

On March 14, 1985, Palladino sent a memorandum to Ben Hayes informing him that NRC's Reorganization Plan No. 1 of 1980 made it the responsibility of the individual Commissioners to supervise personnel in their immediate offices and, therefore, the matter was Roberts' to deal with. On March 15, 1985, Hayes and Ward met with Roberts and his legal advisor, James M. Cutchin. At Roberts' request for all documents related to the matter, Hayes turned over to him copies of the White memorandum, along with two pages of handwritten notes that Hayes had made of his discussions with Palladino.

In his discussion with Hayes, Roberts made a remark that Hayes and Ward interpreted as an expression of concern that the matter might become an issue in Roberts' upcoming confirmation hearing. The matter did not arise in the June 18, 1985, confirmation hearing; however, it surfaced just prior to the Senate Committee on Governmental Affairs hearing on April 9, 1987.

On March 30, 1987, White prepared an affidavit for the Senate Committee on Governmental Affairs staff. In it he stated the following under oath:

-- The June 15, 1983, memorandum attached to the Joosten material and bearing what appears to be his signature, was, in fact, dictated from Washington D.C., signed by his secretary, Peggy Balsamo, in New Orleans, and was not the type of memorandum he was accustomed to sending or receiving.

- He had no recollection of preparing or dictating the memorandum or receiving the attachments thereto.
- He did not recall ever having had possession of internal NRC documents or information regarding Waterford nuclear plants that would not have been provided or left for Middle South Utilities, or made available for the public in the normal course of business.
- He did not recall ever having had a source or having heard of a source for internal NRC documents or information within the NRC, and he did not consider anyone then or formerly employed by the NRC to be a source for such documents or information.

At the April 9, 1987, hearing, Senator John Glenn, the Committee Chairman, questioned Roberts about his investigation of how White obtained the Joosten materials. Roberts testified that he had not questioned White about the matter but satisfied himself that no one in his office had leaked the documents. Roberts said he met with the other Commissioners and informed each of them that he was terminating his investigation without having determined the source of the leak. At the hearing, Roberts testified he destroyed all copies of the documents that Palladino and Hayes had given him. Roberts explained he did this because he was "somewhat paranoid" and thought someone might be out to get him. A day after the hearing, Roberts notified Senator Glenn that he had located the documents he had previously testified to having destroyed. Senator Glenn subsequently referred the matter to the Department of Justice for consideration of possible criminal prosecution.

On April 14, 1987, an NRC management meeting was held in which the Office of General Counsel was requested to review the policies and procedures for handling allegations involving the Commissioners and their offices. The General Counsel replied that OIA had authority to investigate such matters, subject to the judgment of the Commission.

During testimony before the Senate Committee on Environment and Public Works in October 1987, OIA Director Sharon Connelly was asked if, in cases of alleged wrongdoing by the Commissioners or their staffs, she thought the NRC should determine whether to refer the matter to OIA or not. Connelly responded that she thought the Commission had determined that all such allegations were to be referred to OIA and, if not, to the FBI.

GAO's Investigative Analysis

Without determining how NRC documents came into the possession of Middle South Utilities, GAO has been unable to ascertain whether any federal law or NRC regulation was violated.

In his affidavit to the Senate Committee on Governmental Affairs, White did not deny dictating the June 15, 1983, memorandum that transmitted the material to LPL. GAO interviewed White on January 29, 1988. In this interview, White "seemed to recall" that he had dictated the memorandum and stated that he employed words in it containing a certain amount of "puffery" designed to impress his superiors. White stated that in retrospect, had he seen how the words looked on paper, he might not have signed the memorandum. White told GAO that he did not remember where or from whom he obtained the documents, except to say that it was not from a source or sources within the NRC. Additionally, White advised GAO that no official of LPL or Middle South Utilities who was an addressee of his "confidential" memorandum acknowledged having received the materials.

GAO's investigation verified that no LPL or Middle South Utilities official brought to the attention of the NRC an employee's assertion of the existence of a "mole" within the NRC. White's memorandum, no matter how self-serving, demonstrated that a regulated utility secured unauthorized access to NRC documents. The ability to obtain such materials could impact on the NRC's enforcement program, licensing functions, and regulatory procedures.

GAO determined that Roberts did not concern himself with the question of how White obtained the NRC documents, but only addressed the issue of whether someone on his personal staff might have been the utility's avenue of access. In this instance, Roberts dismissed the leak implication by simply asking his small staff if any of them provided the documents to the utility. By doing this, Roberts ignored the potential of a broader problem in that a utility official claimed to have a "source" within the NRC.

Chairman Palladino's referral of the matter to Roberts for handling did not oblige Roberts to adhere to relevant investigative standards. Palladino, like Roberts and the other Commissioners, apparently believed that the referral and disposition of this matter was an exclusive delegation of investigatory authority and discretion. An April 16, 1987, opinion from the NRC's General Counsel appropriately points out the error in this assumption by distinguishing between the functions of supervision and investigation.

Prior to the April 1987 Senate hearings, Roberts learned that his handling of this matter would be subjected to scrutiny. On the day prior to his testimony, Roberts met with a former NRC General Counsel. In this meeting, Roberts advised the former NRC official that he knew this issue would surface at the April 9, 1987, hearing.

The less-than-professional handling of the matter by the NRC, combined with Roberts' cursory investigative effort, might well have jeopardized any possibility for determining where or how White obtained the NRC documents. When the issue first surfaced in 1985, a properly conducted investigation, including an interview of White, might have provided NRC with the identity of "the source within the NRC."

GAO'S INVESTIGATIVE OVERVIEW

GAO was advised by the requestors to expand the scope of its work as necessary to cover unforseen but related matters that might develop. During the course of its investigation, GAO noted apparent problems with the NRC's investigative capability.

The NRC and the U.S. Department of Justice (DOJ) have failed to execute a Memorandum of Understanding governing the referral of possible criminal violations stemming from questionable actions of nuclear licensees. Critics have cited such cases as the D.C. Cook, Three Mile Island, and Fermi cases as examples of the NRC being too cozy with the industry it is charged with regulating. In each of these cases, allegations surfaced that NRC officials engaged in actions that adversely affected the potential criminal prosecution of the concerned utility.

The Senate Committee on Governmental Affairs hearings revealed deficiencies in the NRC's investigative programs and led the Committee to report, "OIA lacks authority, competence and independence." GAO's analysis of the Comanche Peak matter suggests that a supervisor-employee conflict was elevated to the highest levels of the NRC. The matter was raised to such levels because OIA failed to provide NRC management with a proper perspective on the matter under investigation. In another instance, OIA failed to understand the basic issue that they were investigating, thus they were unable to properly serve the needs of the agency. GAO conducted a review of several closed OIA investigative case files. This review found that OIA routinely initiates investigations without first establishing a threshold for acceptance. When interviewed by GAO, Connelly acknowledged this to be true. Additionally, GAO's review of OIA records from 1984 to the present reflects that OIA has not successfully presented a case for criminal prosecution.

NRC management is faced with a problem in which its two primary investigative organizations, OIA and OI, demonstrate a mutual lack of trust, respect, and cooperation. This is evidenced by the OI Director's involvement with the matters GAO reviewed. The OI Director advised that when he learned of the alleged improper conversation between the EDO and a utility official, he did not make a direct referral to OIA, but instead took the information to the Chairman. In the leak of the "sensitive" document matter, the OI Director stated he brought the information to the Chairman, not to OIA, because it concerned a Commissioner. Appropriately handled, both matters should have been referred to OIA for evaluation of wrongdoing. OIA Director Connelly's statement that she is suspicious of the nature of any investigative referral that she receives from OI further demonstrates the lack of cooperation between the two NRC investigative offices.

These three issues suggest a need for the NRC to evaluate its investigative capability. The NRC should assure that its investigators conduct their work in a competent manner using professional standards. Accurate, complete investigative findings are often of major importance to NRC management and the Department of Justice. When investigations focus on criminal matters, the NRC must assure that evidence is properly gathered, safeguarded, and referred to the Department of Justice. The NRC should continue to support the Justice Department throughout the investigative and adjudicatory period. The NRC should assure that its two investigative offices work together with a high level of coordination and cooperation. Their respective missions complement one another and often overlap considerably. This fact requires strong close professional relations. Lastly, the NRC should develop and enforce a strong, clear policy directing the manner in which investigations are initiated, conducted, and referred for judicial or management action that will assure independence and professionalism.

The important mission and critical safety role of the NRC require that it possess a first-rate investigative capability with resources that will assure the NRC's ability to perform its function in a professional, competent manner.

(600028)

ITEM J

Enrico Fermi

Allegations

1. Rather than using the Commission's independent Office of Investigation's report as a basis for regulatory action, the NRC staff chose to discredit the report by issuing its own analysis.

2. Trying to tamper with an OI investigative report on Fermi 2, which concluded that the utility employees had engaged in wrongdoing so as to change that conclusion.

Response

The allegations were investigated and dropped. The OIA investigation report of October 16, 1986 (copy attached) includes my statement as follows:

> ...I requested and received the OI report because of a safety consideration that if licensee management had been untruthful with NRC and had committed the offense of a material false statement, then they could not be trusted to operate the plant and be truthful in their future dealings with the NRC. I reviewed the OI report on Fermi 2 and did not believe that the conclusion was supported by the exhibits. I asked the Executive Legal Director and his staff to review the report and submit their comments.
>
> After I received the staff's feedback on the OI report, I believed that a dilemma existed in that some of the staff believed that they should not look at the entire OI report, but should just accept the OI conclusion as it was written. I took this dilemma to the Commissioners and had them resolve the problem by granting the authority to the staff to review the total OI report and draw their own conclusion based on all the evidence provided in the report.

The conclusion of the OIA report of October 16, 1986:

> This inquiry did not substantiate the allegation that Victor Stello used undue influence to change the OI report of investigation on Fermi 2 or that he tried to have the report changed.

The OIA report was based on interviews of 25 NRC personnel and reviews of transcripts of Commission meetings, and stated that:

> EDO denied any intention of deliberately discrediting the conclusion in the OI report or of having it changed. He encouraged referral of the OI report to the Department of Justice (DOJ). However, he also believed that the safety implications should be addressed by the NRC staff at the same time DOJ was reviewing the matter.

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MEMORANDUM FOR: Chairman Zech
Commissioner Roberts
Commissioner Asselstine
Commissioner Bernthal
Commissioner Carr

OCT 16 1986

FROM: Sharon R. Connelly, Director
Office of Inspector and Auditor

SUBJECT: ALLEGATION OF UNDUE INFLUENCE ON AN OFFICE OF INVESTIGATIONS REPORT

Attached is the Office of Inspector and Auditor's (OIA) Memorandum Report documenting our investigation into an allegation that Victor Stello, Jr., Executive Director for Operations, used undue influence to change or try to change the conclusion of an Office of Investigations (OI) Report of Investigation (3-85-013) on the Enrico Fermi Atomic Power Plant, Unit 2 (FERMI 2).

Conclusion

This inquiry developed no information to substantiate the allegation that Stello used undue influence to change or try to change an OI Report of Investigation on FERMI 2.

Original signed by
Sharon R. Connelly

Sharon R. Connelly, Director
Office of Inspector and Auditor

Attachment:
Memorandum Report

cc: M. Callahan, w/attachment

CONTACT: George A. Mulley, Jr., OIA
x24451

FREEDOM OF INFORMATION/PRIVACY ACT EXEMPTION (b)(5)(6)(7)(C)

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

OCT 16 1986

MEMORANDUM REPORT

SUBJECT: ALLEGATION OF UNDUE INFLUENCE ON OI REPORT

OIA FILE: 186-23

BACKGROUND

On March 6, 1986, Monroe County, Michigan, Commissioner Frank KURON, notified Region III, that he had information that someone in the NRC was going to "doctor up" an NRC internal report on the Enrico Fermi Atomic Power Plant, Unit 2 (FERMI 2). KURON stated he had learned from "our people in Washington" that "STELLO has been at it all week" and "was burning the midnight oil" to change the FERMI 2 report. KURON further stated that any change in the material was a "cover up" and "I know you'll take care of it and you'll fire it out." KURON refused to identify the original source of the information but claimed that the source was "dead right" in previous dealings. KURON stated he had obtained his information from Jennifer PUNTENNEY, an intervenor with the Safe Energy Coalition.

On March 6, 1986, PUNTENNEY told Region III that on March 5, 1986, she received a telephone call from an "NRC source" who told her that Victor STELLO, Jr., Executive Director for Operations (EDO), U.S. Nuclear Regulatory Commission (NRC), was trying to tamper with the Office of Investigations (OI), investigative report on FERMI 2. The source stated to her that the OI report concluded that Detroit Edison employees had engaged in wrongdoing and that STELLO was trying to change that conclusion. The source further told her that the NRC had been meeting all week on the report, and the NRC's Office of the General Counsel (OGC) was arguing that STELLO cannot tamper with the report. The telephone conversations between Region III and KURON and PUNTENNEY were documented in a March 7, 1986, memorandum from Charles H. WEIL, Investigation and Compliance Specialist, Region III, to James G. KEPPLER, Regional Administrator, Region III (Attachment 1).

On March 21, 1986, STELLO prepared a Memorandum for the Office of Inspector and Auditor (OIA), Subject: Allegation - OI Report on FERMI 2, in which he referred the allegations to OIA for appropriate action (Attachment 2).

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SUMMARY

On March 27, 1986, OIA contacted PUNTENNEY to discuss her concerns PUNTENNEY stated that she did not have any additional information. She explained that the information she provided to Region III was third hand, coming from an NRC source through Billie GARDE, an intervenor with the Government Accountability Project (GAP). PUNTENNEY indicated that "we got called and we're trying to find out what was going on." According to PUNTENNEY the information was "speculation" and she did not have any additional information to support the allegations against STELLO (Attachment 3).

On April 11, 1986, Ben B. HAYES, Director, Office of Investigations, was interviewed by OIA and related that STELLO had not asked him to change the OI report on FERMI 2. In discussions that HAYES had with STELLO, STELLO stated he did not agree with the findings in the OI report. STELLO took the position that the staff wanted to review the OI report of investigation to determine if there was a safety significant problem that should be addressed by the NRC prior to the restart of FERMI 2. In answer to his request, OI sent STELLO the final report of investigation on FERMI 2. In that report, OI concluded there was a degree of willfulness and intent on behalf of the utility management. It was HAYES' understanding that when STELLO received the OI report and exhibits, he reviewed the report and disagreed with it. It was also HAYES' understanding that STELLO then asked James LIEBERMAN, Chief Counsel for Regional Operations and Enforcement, (formerly the Office of the Executive Legal Director (ELD)) to do a legal analysis of the evidence in the report. LIEBERMAN's analysis indicated that ELD disagreed with OI's findings in the report. HAYES stated, however, this process did not change the OI report because the report of investigation remained as it was written and signed (Attachment 12).

On April 25 and July 29, 1986, LIEBERMAN stated to OIA that he had reviewed the OI report on FERMI 2 at the request of STELLO. STELLO asked LIEBERMAN to review the report because of the conclusion which essentially stated that the management of FERMI 2 had knowingly withheld information from the NRC concerning premature criticality. STELLO wanted LIEBERMAN to review the report to determine if there was sufficient basis to take NRC enforcement action. LIEBERMAN's review determined that the conclusion of the OI report was not substantiated by the interviews and attachments to the report. LIEBERMAN prepared a memorandum dated March 19, 1986, concerning his review which he addressed thru Guy CUNNINGHAM, III, ELD, to STELLO. LIEBERMAN further stated that when he was asked to review the OI report of investigation he did it at home over a weekend. Both he and STELLO shared the Report of Investigation because they only had one copy and they lived in the same area.

LIEBERMAN denied that he was directed by STELLO or any other person to intentionally discredit the findings of the OI investigation. He further considered his review of the report of investigation to be objective, impartial and factual. (The statements of LIEBERMAN are at Attachments 13 and 14, the March 19, 1986, memorandum is at Attachment 34).

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On July 25, 1986, Thomas REHM, Assistant for Operations, EDO, and on July 28, 1986, Jack W. ROE, Deputy, EDO, and James H. SNIEZEK, Director, Regional Operations and Generic Requirements Staff, EDO, were interviewed by OIA concerning the OI Report of Investigation on FERMI 2. All three stated that as part of the normal EDO review process they independently reviewed the OI report of investigation. It was their belief that the conclusion of the report was not substantiated by the exhibits to the report. All denied that STELLO tried to discredit or have the investigation changed in any way. (The statement of REHM is at Attachment 26, ROE is at Attachment 28, and SNIEZEK is at Attachment 29).

On July 28, 1986, Jane A. AXELRAD, Director, Enforcement Staff, Office of Inspection and Enforcement (IE), stated to OIA that she conducted an independent review of the OI investigation report on FERMI 2 for IE. AXELRAD, who is an attorney, did not believe that the conclusion of the OI report was substantiated by the exhibits to the report. AXELRAD also reviewed the March 19, 1986, memorandum prepared by LIEBERMAN and considered it to be accurate concerning the conclusion in the OI report. (The statement of AXELRAD is at Attachment 27).

On July 29, 1986, CUNNINGHAM stated to OIA that STELLO did not instruct him in any way concerning the conclusion LIEBERMAN was to draw about the OI report on FERMI 2. He believed that the March 19, 1986, memorandum prepared by LIEBERMAN, and transmitted thru him to STELLO, was a factual and an objective evaluation of the OI report. CUNNINGHAM stated that STELLO did not try to have ELD discredit the conclusion of the OI report for any reason. (The statement of CUNNINGHAM is at Attachment 30).

On July 30, 1986, and July 31, 1986, STELLO was interviewed by OIA and stated that he requested and received the OI report because of a safety consideration that if licensee management had been untruthful with the NRC and had committed the offense of a material false statement, then they could not be trusted to operate the plant and be truthful in their future dealings with the NRC. He reviewed the OI report on FERMI 2 and did not believe that the conclusion was supported by the exhibits. He asked ELD and his staff to review the report and submit their comments.

After he received the staff's feedback on the OI report, STELLO believed that a dilemma existed in that some of the staff believed that they should not look at the entire OI report, but should just accept the OI conclusion as it was written. STELLO took this dilemma to the Commissioners and had them resolve the problem by granting the authority to the staff to review the total OI report and draw their own conclusion based on all the evidence provided in the report.

STELLO denied any intention of deliberately discrediting the conclusion in the OI report or of having it changed. He encouraged referral of the OI report to the Department of Justice (DOJ). However, he also believed that the safety implications should be addressed by the NRC staff at the same time DOJ was reviewing the matter.

STELLO further denied that he attempted to influence his staff, OI, or the Commissioners to discredit or change the OI Report of Investigation or to prevent the OI report from being referred to DOJ. (The statements of STELLO are at Attachments 31 and 32).

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During the OIA inquiry, 25 interviews of NRC personnel were conducted. Several reinterviews were also conducted. Based on these interviews and reviews of transcripts of Commission meetings there was no information developed to substantiate the allegation that STELLO attempted to use undue influence to change the conclusion in the OI Report of Investigation concerning FERMI 2. It was further noted that even if STELLO desired to change the OI investigative report, it would have been impossible to do because the report had been finalized and issued.

The attachments to this report identify the personnel interviewed, the dates of their interviews, and the information they provided.

CONCLUSION

This inquiry did not substantiate the allegation that STELLO used undue influence to change the OI Report of Investigation on FERMI 2 or that he tried to have the report changed.

George A Mulley

Anthony Ward, Investigator
Office of Inspector and Auditor

George A Mulley

George A. Mulley, Jr., Assistant Director
for Investigations
Office of Inspector and Auditor

Attachments:
As stated

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Attachments

1. Memorandum for James G. KEPPLER, Regional Administrator, Region III, from Charles H. WEIL, Investigation and Compliance Specialist, Region III, Subject: Allegation that the EDO was trying to change an Office of Investigations Report on FERMI 2 (50-341), dated March 7, 1986.
2. Memorandum for OIA, from Victor STELLO, Jr., Subject: Allegation - OI Report on FERMI 2, dated March 21, 1986.
3. Memorandum for OIA File 186-23, from Keith LOGAN, Assistant Director for Investigations, Subject: Allegations of Undue Influence on OI Report, dated April 4, 1986, (covers the March 27, 1986, interview of Jennifer PUNTENNEY).
4. Report of Interview of A. Bert DAVIS, Deputy Regional Administrator, Region III, dated March 25, 1986.
5. Statement of Charles H. WEIL, Investigations and Compliance Specialists, Region III, dated March 27, 1986.
6. Statement of James KALKMAN, Investigator, OI, Region III, dated March 27, 1986.
7. Statement of Edward G. GREENMAN, Deputy Director, Division of Reactor Projects, Region III, dated March 27, 1986.
8. Statement of Eugene T. PAWLICK, Field Office Director, OI, Region III, dated March 27, 1986.
9. Statement of Roland LICKUS, Chief, State and Government Affairs, Region III, dated March 27, 1986.
10. Statement of James G. KEPPLER, Regional Administrator, Region III, dated March 27, 1986.
11. Statement of Roger A. FORTUNA, Deputy Director, OI, dated April 11, 1986.
12. Statement of Ben B. HAYES, Director, OI, dated April 11, 1986.
13. Statement of James LIEBERMAN, Chief Counsel for Regional Operations and Enforcement, formerly Office of the Executive Legal Director (ELD), presently with Office of the General Counsel (OGC), dated April 25, 1986.
14. Statement of James LIEBERMAN, dated July 29, 1986.
15. Statement of James TAYLOR, Director, Office of Inspection and Enforcement (IE), dated April 25, 1986.
16. Statement of Marjorie NORDLINGER, Attorney, OGC, dated April 25, 1986.
17. Statement of John R. SINCLAIR, Operations Officer, OI, dated April 25, 1986.

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18. Report of Interview of Harold R. DENTON, Director, Office of Nuclear Reactor Regulation (NRR), dated June 10, 1986.

19. Report of Interview of Darrell G. EISENHUT, former Deputy Director, NRR, dated June 10, 1986.

20. Report of Interview of Darrell G. EISENHUT, dated June 17, 1986.

21. Report of Interview of James KEPPLER, dated June 17, 1986.

22. Report of Interview of Nunzio J. PALLADINO, former Chairman, NRC, dated June 20, 1986.

23. Statement of David LYNCH, Project Manager, FERMI 2, NRR, dated July 22, 1986.

24. Statement of William T. RUSSELL, Director, Division of Human Factors Technology, NRR, dated July 22, 1986.

25. Statement of Paul BYRON, Senior Resident Inspector, formerly at FERMI, Region III, dated July 24, 1986.

26. Statement of Thomas REHM, Assistant for Operations, EDO, dated July 25, 1986.

27. Statement of Jane A. AXELRAD, Director, Enforcement Staff, IE, dated July 28, 1986.

28. Statement of Jack W. ROE, Deputy, EDO, dated July 28, 1986.

29. Statement of James H. SNIEZEK, Director, Regional Operations and Generic Requirements Staff, EDO, dated July 28, 1986.

30. Statement of Guy H. CUNNINGHAM III, Deputy, OGC, dated July 29, 1986.

31. Statement of Victor STELLO, Jr., EDO, dated July 30, 1986.

32. Statement of Victor STELLO, Jr., EDO, dated July 31, 1986.

33. Report of Interview of James KEPPLER, dated July 30, 1986.

34. Memorandum for Victor STELLO, Jr., Acting EDO, Thru: Guy H. CUNNINGHAM III, ELD, from James LIEBERMAN, ELD, Subject: Review of OI Report 3-85-013, dated March 19, 1986.

35. Memorandum for Commissioners from Victor STELLO, Jr., Acting EDO, Subject: February 14, 1986, OI Report of Investigation on FERMI 2 (3-86-013), dated March 3, 1986 (with handwritten changes).

36. Memorandum for Commissioners from Victor STELLO, Jr., Acting EDO, Subject: February 14, 1986, OI Report of Investigation on FERMI 2 (3-86-013) dated March 4, 1986.

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Not Attached

1. OI Report of Investigation on FERMI 2 (3-8$\overset{5}{6}$-013) which is contained in the OI files.

2. Closed Commission Meeting Transcript, dated March 12, 1986, which is contained in OIA and Office of the Secretary, NRC, files. (Concerning FERMI 2 and OI report conclusions).

Portions of OIA interviews concerning "NRC source" information.

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Sherman told OIA that he was aware of improprieties by two Region V, NRC employees. According to Sherman, Phillip Joukoff, an investigator assigned to the OI Region V Field Office, was running his "swimming pool" business from his NRC office and was using the government telephone to conduct business. Further, that Owen Shackleton, Joukoff's supervisor was aware of his (Joukoff's) activity and condoned his actions. Sherman further described a party held in OI office space sometime during late 1986. This function was attended by both males and females and wine and beer was served. According to Sherman non-NRC employees were in attendance and these individuals had not been signed in on the region visitor control log which was in circumvention of the region's visitor control policy.

ITEM K

B&W Lawsuit

Allegation

Review of GPU version of B&W lawsuit records was criticized.

Response

On December 29, 1982, the Chairman requested that knowledgeable NRC staff review the record then being developed in the B&W-GPU lawsuit and to advise the Commission whether the NRC's understanding of the TMI-2 accident, including but not limited to the sequence of events, was significantly affected. A team of three individuals was assembled under my direction, as the Deputy Executive Director for Regional Operations and Generic Requirements. The team reviewed the record, approximately 7400 pages of testimony and 478 exhibits. The team concluded that the trial record did not contain information which significantly affected the NRC's understanding of the TMI-2 accident.

During the review, the team became aware that a significant volume of material had been assembled by B&W and GPU in preparation for the trial, the discovery phase of the trial resulted in approximately 1,512,000 pages of material. The Commission concluded that it required more comprehensive review of all documents related to the lawsuit. A team of approximately 25 NRC staff members subsequently reviewed this additional information. This further review confirmed the previous conclusion that the documents did not contain information that significantly affected the NRC's understanding of the TMI-2 accident.

ITEM L

Seabrook

Allegation

Coaching owners of Seabrook in how to get a license.

Response

On March 18, 1986, the NRC staff met with joint owners of Seabrook Unit 1 in a public session to discuss Seabrook Unit 1 licensing issues. A copy of the transcript of that meeting is attached. At the conclusion of that meeting I stated:

> MR. STELLO: Well, let me assure you, we want to do the best we can to resolve issues. I think we have made significant progress, that we are at the point on Seabrook where the emergency planning issue is essentially the only issue.
>
> While there are clearly some administrative processes yet to be completed including Commission decision, the board, we will get those decisions eventually, we will know how they come out. But that will leave us with the most difficult complex issue.
>
> We are prepared and have committed to review whatever proposal we (sic) wish to make and however you wish to make them, we will find a way to get the resources to do what we need to do.
>
> That, however, does not relieve us from the responsibilities of satisfying our regulations. We are satisfied the facility, save the emergency planning issue, is safe....But our rules require us to deal with emergency planning and that we must. How long and what are the right processes to get there, I don't know. I am sure you have struggled with that issue as well as we have.
>
> We are prepared to continue to deal with it in whatever form it takes. We will do our best. But it's going to be a tough road.
>
> Bear with it, be patient, we will do the best we can to get the review done as quickly as we

> can but we have got to do it right.
>
> If we try and rush and get a review that doesn't stand up, we have failed to do our job and I don't think we have done the country any favor if we don't do an adequate regulatory job.

This does not constitute "coaching" Seabrook owners on how to get a license.

Mr. Robert J. Harrison
Public Service Company of New Hampshire

Seabrook Nuclear Power Station

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Attendance
SEABROOK MEETING
3/18/87

V. Nerses	NRC/NRR/PAD
J. Sniezek	Dep Dir NRR, NRC
V. Stello	EDO
E. Jordan	Dir, Div ~~Engineering~~ Emerg. Progs & Eng. Resp., IE
T. Murley	Administrator, Reg 1
D. Ross	Dep Dir Res.
R. Byrne	General Manager, Massachusetts Mun. Whole. Elec. Co. (MMWEC)
R. Harrison	PRESIDENT & CEO PSNH
J. Eichorn	Chairman & CEO EUA
G Edwards	United Illuminating Pres. & CEO
W B Derrickson	Sr VP New Hampshire Yankee
E. A. Brown	PRES – NEW HAMPSHIRE YANKEE
T. G. Dignan, Jr	Ropes & Gray
TC Feigenbaum	V.P. Engineering & Quality Programs, NHY
R. E. Sweeney	NHY LICENSING Rep
GS Thomas	VP - Nuclear Production – NHY
D.P.G. Cameron. Jr	VP- General Counsel PSNH
J. Tranen	VP- NEW ENGLAND POWER CO.
K. Silbaugh	NECNP
RW Bishop	Northeast Utilities
D.J. Perrotti	NRC/OIE
F Kantor	NRC/IE
E. Igne	NRC/ACRS
R. A. Bari	Brookhaven Nat. Lab.
E. J. Reis	NRC/OGC
W. Olmstead	NRC/OGC
J. P. Murray	NRC/OGC
S. Mitchell	Kensington NHCD

OTHER ISSUES THAT MAY IMPACT THE SCHEDULE FOR ISSUING THE 5% POWER LICENSE

- SIRENS THAT FAILED TO PERFORM IN EAST KINGSTON, N.H. - LATE FILED CONTENTION THAT ALSB NEEDS TO RENDER A DECISION

- SIRENS FAILED TO MEET SOUND LEVEL ACCEPTANCE CRITERIA IN MERRIMAC, MASS. - LATE FILED CONTENTION THAT ALSB NEEDS TO RENDER A DECISION

- SUPERIOR COURT OF N.H. ORDER TO REQUIRE REMOVAL OF SIRENS AND POLES FROM THE TOWNS OF RYE & HAMPTON FALLS, N.H. - LATE FILED CONTENTION THAT ALSB NEEDS TO RENDER A DECISION

SCHEDULE AND SCOPE

OF

PETITION REVIEW

L. CORREIA	CONG. EDWARD MARKEY
R. BARRETT	NRC/NRR
F. Miraglia	NRC/NRR
D. STROME	NHCDA
J.R. KYTE	BMc, INC.
T.M. MENNUTI	BMc INC
[illegible]	NRC
Joe DiNunno	NRR/OCA
T. P. SPEIS	NRC/NRR
C.E. ROSSI	NRC/NRR
SF Newberry	NRC/NRR
Steve Long	NRC/NRR
S. VARGA	NRC/NRR
F. CONGEL	NRC/NRR
D. MATTHEWS	NRC/IE
S. TURK	NRC/OGC

ITEMS RELATED TO 5% POWER LICENSE

- SAFETY ISSUES THAT WERE LITIGATED - ASLB NEEDS TO RENDER A DECISION
- ALAB 853 (ISSUANCE OF A LICENSE PRIOR TO THE SUBMITTAL OF OFFSITE EMERGENCY PLANS) - COMMISSION NEEDS TO RENDER A DECISION.
- CONTROL BUILDING AIR - APPLICANT NEEDS TO PROVIDE INFORMATION STAFF REQUESTED ON MARCH 3, 1987.
- PART 21 FILED BY GA TECHNOLOGIES, INC. (ENVIRONMENTAL QUALIFICATION OF COAXIAL CABLE FOR IN - CONTAINMENT HIGH RADIATION DETECTOR). APPLICANT NEEDS TO FORMALLY PROVIDE INFORMATION. STAFF HAS REQUESTED BY LETTER DATED MARCH 11, 1987. THIS MATERIAL SUBJECT OF BOARD NOTIFICATION DATED MARCH 13, 1987.

A. "PROJECTED DOSES FROM TRADITIONAL DESIGN BASIS ACCIDENTS WOULD NOT EXCEED PROTECTIVE ACTION GUIDE LEVELS OUTSIDE THE ZONE".

- NRC PERFORMING ANALYSIS
- ADDITIONAL TECHNICAL MEETINGS WITH PSNH NECESSARY
- SCHEDULE: JUNE 1987

D. "DETAILED PLANNING WITHIN 10 MILES WOULD PROVIDE A SUBSTANTIAL BASE FOR EXPANSION OF RESPONSE EFFORTS IN THE EVENT THAT THIS PROVED NECESSARY".

- ADDITIONAL INFORMATION IS NEEDED REGARDING ORGANIZATIONAL FRAMEWORK AND CAPABILITIES FOR TAKING AD HOC PROTECTIVE ACTIONS AT DISTANCES BEYOND ONE MILE

1350

UNITED STATES
NUCLEAR REGULATORY COMMISSION

ORIGINAL

IN THE MATTER OF: **DOCKET NO:** 50-443

MANAGEMENT MEETING BETWEEN
PUBLIC SERVICE COMPANY OF
NEW HAMPSHIRE
AND NRC STAFF
TO DISCUSS COMMON PROBLEMS

LOCATION: BETHESDA, MARYLAND **PAGES:** 1 - 52

DATE: WEDNESDAY, MARCH 18, 1987

ACE-FEDERAL REPORTERS, INC.

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Washington, D.C. 20001
(202) 347-3700

NATIONWIDE COVERAGE

B. "DOSES FROM MOST CORE MELT SEQUENCES WOULD NOT EXCEED PROTECTIVE ACTION GUIDELINES OUTSIDE THE ZONE".

C. "FOR THE WORST CORE MELT SEQUENCES, IMMEDIATE LIFE THREATENING DOSES WOULD GENERALLY NOT OCCUR OUTSIDE THE ZONE".

AREAS TO COMPLETE -

ACCIDENTS AT SHUTDOWN

CONTAINMENT BYPASS

COMPLETE PRA REVIEW

CONTAINMENT LOADS/DIRECT CONTAINMENT HEATING

INDUCED STEAM GENERATOR TUBE RUPTURE

ADDITIONAL INFORMATION WILL BE NECESSARY TO COMPLETE EVALUATION

SCHEDULE: NOVEMBER 1987

UNITED STATES NUCLEAR REGULATORY COMMISSION

SEABROOK LICENSING ISSUES MEETING

Wednesday, March 18, 1987

The Phillips Building

7920 Norfolk Avenue

Bethesda, Maryland

* * *

PROCEEDINGS:

(2:10 p.m.)

MR. NOVAK: Good afternoon, gentlemen, my name is Tom Novak. I am.. Acting director of the Pressurized Water Reactor Division, and I will kick off this meeting this afternoon.

This is a meeting with the Public Service of New Hampshire Yankee Company with regard to Seabrook Unit 1.

This meeting is being held in response to a letter from the utility of February 18, 1987, where they suggested that it would be useful to have a meeting of this type to have an open discussion on issues affecting Seabrook's license and to facilitate the development of timely and reasonable solutions to these issues.

We have with us today a number of key members of the NRC staff.

I know from the other side there are senior members of Public Service of New Hampshire and other utility representation.

As you know this meeting is being transcribed, so when you speak, I would ask you to identify yourself so it can be properly recorded.

Attached to that letter of February from the utility was a proposed agenda. We have reviewed it, with

We have listed the other nuclear operations where some of us are involved.

Even though the other owners are not here, we wanted to be sure you understood the four gentlemen sitting here at the table along with the other three and myself represent about 80 percent of the Seabrook project ownership.

The reason for our meeting is we asked you to sit down with us because we feel the plant construction is complete.

As you know the fuel is loaded, not irradiate A hot functional tests, they are essentially complete, both prior to fuel loading and after fuel loading.

We believe Seabrook is well built and is manned by a trained and experienced staff, backed up by our Yankee nuclear organization in New England.

Emergency planning is the only major issue we know which is remaining open. Seabrook has done everything possible, continues to do everything possible to get this plant on line.

The owners' of the Seabrook project financial resources are not unlimited. To that extent I am going to ask Bob Harrison if he would just elaborate a little bit about some of the financial conditions of this company as some slight moving we think it's a good agenda.

There are a number of copies of the agenda available.

I would intend to follow that agenda, and hopefully within an hour and a half or so we can reach the closing statements as suggested by this agenda.

Those were the only remarks I had prepared. Mr. Brown, I understand you will first speak for the utility and we will turn over the meeting to you at this time.

MR. BROWN: Thank you. I defer to Mr. Eichorn, who is Chairman of the Executive Committee of the Joint Owners, Chairman and Chief Executive of Eastern Utilities Associates.

MR. EICHORN: Good afternoon, gentlemen. I thank you very much for the opportunity to visit with you today.

As Ed has mentioned to you, I am Chairman of the Joint Owners Executive Committee. Sitting here with us, I would just like to tell you who is here so that you will understand where we come from.

To my right is Robert Harrison, President and Chief Executive Officer of Public Services New Hampshire.

To my immediate left is George Edwards, President and Chief Executive Officer of United

Illuminating Company.

To my far right is Richard K. Byrne, General Manager for Massachusetts Municipal Wholesale Electric Company.

I don't need to have any introduction of our chief builders of the nuclear plant, Joe Derrickson.

In addition we have with us today some other representatives of the Joint Owners: Jeffrey Tranen is here, Vice President, New England Power Company, representing Sam Huntington who unfortunately couldn't be here today.

Robert Bishop, Northeast Utilities.

We have people from the plant in addition to Mr. Brown and Mr. Derrickson: Ted Feigenbaum, Vice President New Hampshire Yankee Division.

George Thomas, Vice President Nuclear Production, New Hampshire Yankee Division.

Thomas Dignan from the firm of Ropes & Gray in Boston, counsel.

And Robert Sweeney, Licensing Representative, New Hampshire Yankee in Washington.

I have this list prepared and printed for you. Ed Brown will give copies out. It also tells about our membership and concerned other organizations which might be of interest to you.

there comes a time when you just have to reach the end of the trail.

My company continues to be able to meet its obligations financially. At this point in time we don't see any end to that.

Nonetheless, this is a road that at some point in time will come to a dead end.

MR. EICHORN: I think it is important that we say that not only is the financial resources of the utility being strained of course, but also the regional rate payers are suffering. They are paying an economic penalty in several different ways.

Seabrook itself will replace about 12 million barrels of oil per year once it starts operating. As you probably know, in New England we do have high predominance on imported oils.

This would help cut the balance of payments for the whole country as far as that is concerned.

But even over and above that aspect, the rate payers are paying because of our power situation in New England.

We have to look to other pools, and I will ask George Edwards in a second to expand on this, we have to look at other pools to come in and help us out during our peak periods.

the load on the system.

We are forecasting a peak this summer of 18,400 megawatts. We anticipate, and my people briefed my regulatory commission and governor's energy group in Connecticut yesterday, we will be in OP 4 a number of times this summer.

That will involve voltage reductions, voluntary load curtailment and implementing all of the interruptable load plans that we have.

Now, whether we have to go to what we call operating procedures 7, OP 7, is a function of the weather and of the generating plant performance that we are able to have this summer.

Our average forced outage rate is approximately 2,000 megawatts. Now, if we exceed 2,000 megawatts, and in this August, early September timeframe and if the summer turns out to be extremely hot, then there is no question in my mind we will have to implement OP 7, which is involuntary load shedding. It's a very serious matter.

All of this assumes the Pilgrim plant owned by Boston Edison and others, operated by Boston Edison, will not be available and of course now we don't have Seabrook available this summer unless you all have some startling information for us.

I give you this situation because we have gone through similar situations for the past two summers. The capacity is definitely needed.

Seabrook, by itself, will not solve the capacity problem, but it will certainly go a step in the right direction as far as alleviating some of the problem.

As I said, in my particular state, Connecticut, we briefed the governor's staff and our regulatory commissioners yesterday.

I will add as an aside, the governor of my state and the regulatory commission are publicly in favor of the completion of Seabrook and operation of Seabrook. We have four operating nuclear reactors in Connecticut, as you know.

The political climate for whatever it is worth in Connecticut is very good with respect to nuclear power. It's been there for a long time, they understand it, and we need the capacity.

MR. EICHORN: You can tell George is from southern Connecticut.

(Laughter.)

MR. EDWARDS: I might add, I came from Georgia Power Company. I understand a full power license was issued to the plant. I talked to my good friend Bob Scherrill last week, and he was very happy to have his full power license.

MR. EICHORN: I would like to ask Dick Byrne who represents, General Manager, who represents Massachusetts Municipal Wholesale Electric Company to speak to us briefly about the support we get from the Massachusetts Municipal group.

MR. BYRNE: I am general manager, and as such am its chief executive officer. I would like to address the Seabrook need from a public power perspective for just a moment.

We have approximately 28 public power entities that purchase Seabrook power through MMWEC. And we have a desparate need for that power.

We have approximately 150 elected municipal commissioners, or co-op trustees, that represent the participation in Seabrook through MMWEC.

All but four of those commissioners strongly support bringing Seabrook on line and support the project and its need.

They have asked me to deliver that message to you. That we need Seabrook from a need standpoint. It's costing our consumers tens of millions of dollars today.

MMWEC is a bit different than the investor-owned utilities. We are not governed by the Construction Work in Process rules and laws. Our consumers are paying the debt service on Seabrook today.

As a result we are having to buy the replacement power capacity, costing our public entity, about 500,000 customers, somewhere on the order of $30 million a year.

We are threatened for our survival by the fact Seabrook is not on line today. Our systems are growing at five percent. We are anxious to get this plant on line at the earliest possible date.

MR. EICHORN: Thank you, Dick.

Before turning this over to Bill Derrickson to get into the specific first item on the agenda, I would just like to remind you that New England does have eight operating nuclear units, the first of which was built in Massachusetts, in Rye, Massachusetts in 1960.

New England has got 120 years of reactor experience in operating these units. In 1986 more than 33 percent of the total electric energy consumed in New England was generated by these nuclear units.

Seabrook, as I mentioned earlier to you, will save an additional 12 million barrels of oil per year. I like to look at it another way. With the eight units we have operating we have had the equivalent of running Seabrook for 50 years, equivalent. When you talk the megawatt years that we have had experience from the existing units.

Bill, if you would please address some of the specific questions.

MR. DERRICKSON: Thank you, John.

Gentlemen, before I review the status of the plant testing program and Seabrook licensing issues, I want you all to realize that we fully appreciate the important responsibility you have to protect the health and safety of the public in nuclear matters.

We want you to understand it is our honest belief that we share in this responsibility with you. All of our actions and decisions at New Hampshire Yankee or directed first and foremost to public well-being.

We have taken special care to build the plant right, as borne out by your numerous independent inspections as well as ours.

We have spared no expense in the training of our operating staff as reflected in the high scores and excellent pass/fail ratios of our operating license candidates.

We have taken deliberate-measures to build in operational checks and balances after observing the management structure of the best run nuclear plants in the nation.

We want you all to know -- we also want you to know that our petition to reduce the size of the emergency planning zone was not a knee jerk reaction to the governor of Massachusetts' decision not to cooperate on emergency planning for Seabrook.

New Hampshire Yankee's decision to submit the zone reduction request was made only after months of careful deliberation of the safety issues and due consideration of Govenor Dukakis' concerns all of which we have found to be vague and unsubstantiated.

Our petition filing on the other hand is the culmination of five years of careful study of Seabrook-specific design and operational features, together with detailed analyses of safety consequences of possible accidents.

Our technical study upon which our petition is based was prepared by recognized experts in the field of probabilistic risk assessment and was independently evaluated by a well-qualified peer review group.

This study is a solid and credible effort that uses conservative source terms and is extremely well documented.

We are here today to tell you now that the Brookhaven review of our study, now that the Brookhaven review of our study is issued we want to move forward with the licensing process. And we are ready to commit the resources and apply the necessary effort to answer your remaining questions on our petition and to supplement it, if necessary.

The chief executive officers here today have an additional responsibility to deliver power to New England at a reasonable cost.

You have heard from them. Due to delays in the licensing process for Seabrook, this task is becoming more and more difficult.

We all understand that you cannot and must not make your licensing decisions based solely or primarily on economics nor are we urging you to do so.

I do, however, feel that public good is not served by a long, drawn out licensing process such as we are now experiencing with Seabrook, a process that started on March 30, 1973, with the application for a construction permit.

I also believe very strongly that public safety and economically practical nuclear power are not mutually exclusive.

All that we request is that you consider our operating license application in a fair, equitable and timely manualer, notwithstanding the political attacks and emotional rhetoric you have been exposed to and will undoubtedly continue to be exposed to.

Now, as far as the plant, agenda item number 1, the plant is ready, the plant is fuel loaded into the reactor.

We are just finishing the post core loading hot functional testing. If all continues to go well we will be cooling the plant down this week and will be in mode 5 over the weekend. We will have completed the testing program.

We were hoping to have a five percent license so we could continue while the plant is hot to do the low power physics tests. We will discuss that in another agenda item.

In terms of the next item on the agenda, the five percent license, there were a few loose ends, if you will, a few issues that had to be taken care of. We believe these are disposed of.

Pretesting of the emergency feedwater system, the elgar inverter, Raychem splices, General Atomic radiation monitors, all of these we have closed out. We have been attempting to get with your resident inspector at the site to have him verify he is satisfied. I understand he is not at the site this week, but as soon as he is available, that contact will be made to get those meetings together.

The only other issue we know of related to the five percent license was the court decision to, which ordered us to remove siren poles in the towns of Rye and Hampton Falls.

We have appealed that order to the New Hampshire Supreme Court and a removal order by the Superior Court is stayed pending the Supreme Court action which may take many months.

From our perspective that is where we stand with the five percent license.

MR. NOVAK: I think what we would like to do, we would like to go through the agenda where we will respond where we do have comments.

I would like to then back up to the plant readiness portion and ask first, Tom Murley of Region 1 if you have any particular comments you would like to make regarding your view of the readiness plan.

MR. MURLEY: Yes, I checked with my staff this morning. In fact, the last test to be done was a rerun I guess of emergency feedwater test. That has been completed.

We will probably want to look into the results of that a little more and understand a bit of the test results.

But I have no reason to think that wasn't done satisfactorily.

We also continue to get allegations about construction deficiencies that are coming in more or less steadily.

We have looked in those as we get them and have not found anything that would cause us to change our original conclusions about the quality of the plant.

Nonetheless, because we are still getting them, there is always that possibility.

So in summary I would say our judgment is that it's essentially completed and ready for low power testing.

MR. NOVAK: Thank you, Tom.

We have a few comments we would like to present also with regard to our views on the status and schedule of the low power license.

I would ask Vick Nerses, project manager for Seabrook, to summarize his views.

Dick, would you care to use the podium?

MR. NERSES: We are passing out some handouts. These are items that are related to the five percent power as we see it today.

(Slide.)

MR. NERSES: The first one is the safety issues that were litigated. Here we need the court to render a decision.

The next one is ALAB 853 which is before the

Commission and we need the Commission to render a decision.

Then we have an issue on the control building air. At this point we need to have you provide us the information we requested on March 3, 1987.

Mr. Derrickson mentioned the GA Technologies, part 21. We have requested you people provide us information by letter March 11.

Again, I point out this material is subject to board notification, the date was March 13, '87.

There are maybe some other items. In the hand out you have got two items related -- items that deal with the five percent power.

(Slide.)

MR. NERSES: The second slide there would indicate possible items that would impact the five percent power license schedule. OGC will address that.

MR. NOVAK: Shep Turk of our staff will speak to it.

Before we pass over that, with regard to the Part 21 filing, the reason we provided that information to the board is it dealt with environmental qualifications which was in contention at the hearing.

On that basis we considered it to be material and relevant. We would expect to deal with that matter before the board would render a decision.

MR. FEIGENBAUM: Ted Feigenbaum, New Hampshire Yankee.

For your information on the GA Technologies Part 21, our response is into the NRC as of today and indicates we do not have a problem indicated in Part 21.

MR. NERSES: Any more questions? I think this pretty much indicates about what the status is.

MR. TURK: Sherwin Turk. This is a very brief presentation. It concerns a few motions filed before the on-site licensing board. All these matters concern the sigh recognize which are part of the early notification system.

These are matters which are not strictly required before the board can go ahead and authorize issuance of a five percent license, but we mention them because they are sitting in front of the licensing board and we want to take note of that at this time.

(Slide.)

MR. TURK: As you know there were some tests of sirens in East Kingston, New Hampshire. The sirens failed, apparently they were tested during adverse winter conditions, there was iceing.

Motion to reopen was filed based on that. Motions of course filed both by the utility and staff. Positions taken by both the utilities and staff is that there is no problem which would prevent issuance of a license.

In addition, there the same motion referenced the Superior Court of New Hampshire decision on the sirens and poles located in the towns of Rye and Hampton Falls. Again, there both the applicants and staff responded to the licensing board that there was no problem which would affect issuance of the low power license.

Finally the bullet in the center of this slide relates to a motion to reopen that is still sitting before the licensing board as are the other issues on the slide. This particular motion to reopen involves sirens in Merrimac, Massachusetts.

Apparently, those sirens were tested using incorrect frequencies and based on the initial test would appear to have been unacceptable. There has been some retesting done. The utility has issued a paper indicating they are satisfied.

These matters are mentioned only to indicate that they are sitting in front of the low power licensing board now.

Are there any questions on those matters?

MR. STELLO: Do we have any indication of when the board is scheduled for a decision?

MR. TURK: Nothing we can rely upon. I don't know why the board has not issued a decision. They are apparently working on the decision. We will have to wait and see.

MR. STELLO: Okay.

MR. NOVAK: All right.

MR. STELLO: Let me see if I understand the process.

Once we get a decision from the board, assuming the decision is favorable, we also need a decision from the Commission on ALAB 853 before the staff would have the authority to make a decision on licensing, do I understand correctly, those two, with respect to plant readiness, that is not an issue.

There are two issues, one before the board and one before the Commission.

MR. TURK: That's right.

MR. NOVAK: That would be your understanding, as well; is that correct?

MR. DERRICKSON: I guess as far as the requirement it's our understanding. I would like to back up down memory lane for just a moment.

The board held a hearing late September on three contentions on the five percent license. It's now almost April.

We are still sitting here without having any idea of a schedule of who is going to do what by when. We just can't seem to find out anything.

As a representative of the owners from the standpoint of being responsible to try to get the plant licensed we can't tell the owners or the stockholders or customers anything about the fate of this four and a half billion dollar investment. We find that to be rather distressful.

MR. STELLO: How about frustrating?

MR. DERRICKSON: Both.

MR. STELLO: The board is clearly independent. They are going to take the time they take. I don't know when we are going to get an answer. As Mr. Turk said he would have expected they would have made a decision. We don't have one yet. Until we have one we can be frustrated together.

MR. DERRICKSON: What about the commissioners' decision, do we have any time table on when they expect to make a decision on the ALAB issue?

MR. NOVAK: We have had some informal discussions which would suggest early April. That is what we have discussed.

Again, there is nothing on any specific Commission agenda which would suggest some decision process but our schedule, what we expected was that the board decision would be issued in March as Mr. Turk said. We felt late March was probably a conservative date. Then the other issue was the Commission decision which we felt was reasonable to assume in early April based on what we understood.

We will promptly file any responses that you made with regard to Part 21 to close out any material we have put before the ~~board~~ regarding a contention. From that point of view we will expedite anything we can do to provide that to the board.

Those were the comments we had with regard to plant readiness and the five percent license. We are prepared to let you proceed with the agenda.

MR. BROWN: Could I just ask, is the Commission waiting for anything from either technical staff or legal staff prior to their decision?

MR. STELLO: To the best of my knowledge, the answer to that is no.

MR. NERSES: No.

MR. STELLO: Everything we have been asked for, we have provided.

MR. BROWN: All right.

MR. STELLO: But you know, I appreciate your being frustrated. Again, that is the process. I have seen board decisions that have gone quickly and others that have taken a long time. I don't know.

We can make an attempt to find out if that is scheduled. Maybe that would not be improper. We can attempt to find out.

MR. DERRICKSON: We would like to make a formal request to you all to know that.

MR. STELLO: You have got those high-priced attorneys, too, they can call. Our attorneys call, you call, maybe we will both get answers.

MR. DERRICKSON: Later I will make the request of counsel. Right here I will make the request of you, if you don't mind.

MR. STELLO: I already asked them to do it.

MR. DERRICKSON: Appreciate it.

MR. STELLO: We will do the best we can. That does not mean it will go fast or slow. All we will do is find out schedules.

And if there is anything they are waiting for, certainly I would hope we would get an answer if there is something they wanted from us.

They are free to let us know. I have not heard word one.

MR. DERRICKSON: We appreciate it.

MR. REED: Moving on.

MR. EICHORN: Before we get into the next phase which describes full power license and emergency planning aspects and your report on New Hampshire I think it would be well if we asked Mr. Brown to outline for us what we have done in trying to overcome the neighboring state problem, the State of Massachusetts' problems and what our efforts have been.

Would you cover those briefly, Ed?

MR. BROWN: As most of you know, the State of Massachusetts had a plan developed. It was developed to the point of having two different informal reviews by FEMA at different points in time.

And also the State of Massachusetts has in place emergency response plans for three other operating nuclear facilities.

The decision by the governor of Massachusetts to withhold submission of the Massachusetts emergency plans in September of 1986 was not unexpected by us but it was a disappointment.

We in New Hampshire Yankee and members of the Executive Committee had been engaged prior to that time in a number of initiatives with officials in the state of Massachusetts. That took place over an extended period of time, prior to the governor's announcement.

I would just like to summarize a few of these initiatives, some of which you may not be aware of. We had meetings directly with the governor and with the Massachusetts attorney general on several different occasions to discuss conditions under which a plan would be submitted by the state of Massachusetts.

These included such things as summer shutdown of Seabrook for a period of time and the construction of shelters along the beaches if a study by an independent prestigious institution determined such shelters would be advisable. And we were fully prepared to agree to those conditions.

We had frequent regularly scheduled meetings with the governor's staff and attorney general's staff to resolve issues at a lower level.

We established a New Hampshire Yankee community relations function consisting of six individuals covering the six Massachusetts towns to work daily since 1984, with the Massachusetts communities, civil defense people on training, equipment requirements and plans.

We had statements by the executive management of New Hampshire Yankee and of the joint owners before and after September, 1986 that our preferred course of action would be to have the State of Massachusetts participate.

We had direct laison with the Massachusetts civil defense personnel by our New Hampshire Yankee emergency planning people on a daily basis.

We went to the extent of having visits, encouraged visits and arranged for visits to the plant by each of the Massachusetts six communities' boards of selectmen, city councils, civil defense people, teachers associations, et cetera.

We have letters to the governor and other state officials requesting their participation.

Subsequent to the Chernobyl event when the Massachusetts governor appointed Dr. Albert Carnasale to advise and consult with, we worked with Dr. Carnasale, had him visit Seabrook on a tour, lengthy discussions, numerous items of correspondence, and transmitted to him any information requested and any information we had available as we received it on Chernobyl.

These are just highlights. There are other initiatives and other overtures made in addition. And we intend to continue to have initiatives with the date of Massachusetts and to consider any reasonable request that they may make in order to encourage the state to participate.

In the host state of New Hampshire the situation is positive.

In addition to the participation of the state we have an executed agreement which I signed to continue to provide resources for a full ten mile planning effort irrespective of what the results to our petition to reduce the zone may be.

That means we are committed to planning with them for a full ten mile zone to provide resources, to provide the funding under the requirements of the New Hampshire state law, to provide training and anything else that is necessary.

We have extended this same offer to the commonwealth of Massachusetts, the neighboring state, and we will continue to do so.

I think it is important to close this brief statement by saying we will do whatever we can to encourage the State of Massachusetts to participate and, as a matter of record, I would like to say that continues to be a considered course of action but unfortunately one that has been brought to us.

MR. EICHORN: Bill, would you please cover the New Hampshire situation as far as the status of the full power license?

MR. DERRICKSON: With respect to emergency planning in New Hampshire plans were developed by the state of New Hampshire, filed with FEMA and an exercise conducted in February of '86. Hearings are scheduled for June of this year.

We intend to fully support those hearings and hopefully get these matters behind us promptly.

In addition to that the congested pathway plan for the state of Maine was filed recently. That too is in the loop, if you would.

As Ed indicated in the state of New Hampshire irrespective of the outcome of the petition we have entered into an agreement with the state of New Hampshire to support a ten mile emergency planning program for that state, which really brings us down to agenda item E, unless you have any questions or comments on the New Hampshire emergency plans.

MR. NOVAK: Are there any members of the staff that want to comment?

I think you properly summarized it. Thank you.

MR. DERRICKSON: On December 18, 1986, we filed a petition with the Atomic Safety and Licensing Board under 2.758 and 5047 C requesting a waiver to the ten mile emergency planning rule based on our study we had submitted to you in June of '86.

We know that there has been a lot of activity or some activity. In fact I believe there is a technical meeting scheduled for the 25th of this month between us and you and perhaps your contractors, or whomever. What we are really interested in here is trying to get an action plan developed for the prompt review of this petition, if you will.

Perhaps that can be done in conjunction with the 25th meeting.

I might just ask for your comments on where we stand here and how and where we are going to proceed.

MR. NOVAK: We do have some prepared comments on the petition. So if you would like to hear them now.

MR. DERRICKSON: Yes.

MR. NOVAK: I would like to ask Scott Newberry of our staff to summarize briefly the status of our review.

You are direct that Brookhaven has provided us with their report of the review of your technical documents. The waiver request of course represents the summation of that.

Scott Newberry will try to identify those activities that the staff feels yet have to be done, dealing with each of the rationales you provided in your waiver.

It is on that basis he will makes his presentation.

MR. NEWBERRY: I will wait a moment until you all have a copy of the vugraphs.

What I intend to cover is the status of the petition review, giving you the basic areas that have been covered in the review but primarily what still needs to be done and when we expect to complete it.

The way I have organized these vugraphs is to take the four major areas of the petition, or rationale, and to tell you where the review stands for each one.

(Slide.)

MR. NEWBERRY: The first area has to do with design basis accident analyses. We have reviewed your submittal and are near the end of performing our own dose calculations pertaining to this rationale. Based on what we know now we expect to be getting to you very soon, I expect to be talking about this next week regarding how we will resolve remaining questions on this rationale, on these calculations.

We expect that this shouldn't take too long. We would estimate a schedule of June, 1987, to complete our review in this area.

Please interrupt me if you have any questions.

(Slide.)

MR. NEWBERRY: I have grouped rationales B and C together because the areas that we still need to complete really pertain to both of these rationales. Both have to do with the probabilistic risk assessment, severe accident area.

As you stated, Mr. Derrickson, Brookhaven has completed its report and these areas are based in large part on Brookhaven's recommendations to us and our review of their report.

There are five general areas that I list here. The first two are specific areas that just in our opinion need to be completed and picked up from where Brookhaven left off.

I wouldn't consider them to be major areas, but we do need to complete the work on the accidents at shutdown and containment bypass.

We also realize, as you know, your PRA was submitted to us several years ago, review was started. A substantial amount of work was done and we believe that we also need in the next few months to pick up that review and become more familiar with it and the Seabrook plant as it pertains to especial high the ability of the containment.

The last two areas, containment loads, induced steam generator tube rupture, deal with the, I will use the term phenomonology or the challenge to the containment building resulting from a severe accident.

We believe that these two issues or areas are the most significant of this group. We see significant interaction that is going to have to take place between us and your people to resolve these areas.

If you would like to go into --

MR. FEIGENBAUM: On the November, '87 schedule, could you tell us a little bit about what that is based on and are there actions the applicant can take to help expedite your review and improve that schedule?

MR. NEWBERRY: The basis for the November, '87 date was taking each of the issues that need to be on this list.

Let me pick an example, accidents at shutdown, where we see questions where we would need help from you to understand your analysis, to help us complete our review, and we don't see that part of the review to be limiting. That could perhaps be done in the nearer term.

Moving on down the end of the list in terms of resolution or certainly completing our review on the containment loads that challenge containment in the areas of dry containment heating or the challenge to the steam generator tubes from a severe accident, at a minimum we are going to have to have significantly more dialogue and more work on our part to complete our review.

At this point I think I could summarize by saying we, based on the work we have done so far, don't have the confidence that your submittal says that you have in the containment surviving those challenges. So we see quite a bit more work to be done in those two areas.

MR. STELLO: Let me at least point out, I think when we have these discussions you will see there are some things that you can do that can preclude having some of these problems, like direct heating issue, at least an option to look at accident mitigation procedures to open up the PORV at the right time, then you never have the challenge.

If that alternative works out that clearly can ease up in terms of trying to deal with very complex phenomena and issues, preclude consideration of them by being able to preclude the event.

That is a rather detailed technical discussion.

MR. FEIGENBAUM: We would like to kick off that discussion at the March 25 meeting. We have suggestions or ideas of how we might be able to help you resolve these issues and possibly improve the schedule.

MR. EICHORN: We want to be sure you folks understand we will commit any one of our people to help any consultant we can get to help to expedite the schedule. All we are doing is looking for ways to be able to do it.

In all questions, we have tried to help them look at it.

MR. STELLO: Good. Let's get together on it quickly.

MR. DERRICKSON: If you give us the questions, we will do something, give you the information needed to answer the questions. We are not sure what they are.

MR. STELLO: We are not sure.

MR. DERRICKSON: We know. How well I know.

MR. NEWBERRY: I think I should say we will make sure we have the right people at the meeting this coming Wednesday.

(Slide.)

MR. NEWBERRY: The last of the four rationale has to do with being able to show the ability to expand necessary response beyond the EPZ. I think my vugraph is self-explanatory there.

MR. DERRICKSON: Okay, this, as I understand it, is related to criterion 4?

MR. NEWBERRY: Yes, sir; that's correct.

MR. DERRICKSON: I guess there are ranges of things we can do.

Obviously, we have told you on the record and we have an agreement in New Hampshire that detailed emergency planning will be done for the entire ten miles and in fact at nowhere less than two miles will emergency planning be done because the plant is over two miles from the state of Massachusetts. So we have detailed plans between one mile and two miles now agreed to with the state of New Hampshire.

MR. STELLO: Yes.

MR. DERRICKSON: So I guess in satisfying criterion four, if what you are asking for here, I don't want to lead you into anything, are detailed emergency plans in the State of Massachusetts.

Am I interpreting this correctly?

MR. JORDAN: The fact you have no plans in Massachusetts, there is not a planning base to extend is I think the point, being blunt.

MR. DERRICKSON: Let me reread this. We draw no plans in Massachusetts because the State of Massachusetts refuses to submit plans. However, there were plans written by the state of Massachusetts, but not submitted.

MR. JORDAN: Right. Understand, assuming there was a reduced EPZ, it didn't include Massachusetts, there is no agreement, no plan, no understanding of communication, then it's very hard to extend or give you credit for having ability to take those ad hoc protective actions in Massachusetts.

MR. BROWN: I understand we don't want to get into a detailed debate.

MR. JORDAN: Right. I am just identifying the problem more clearly, I hope.

MR. BROWN: I would like to point out under criteria four or rationale four there is no plan for mile 11 where there is a ten mile plan.

MR. STELLO: That's true.

MR. JORDAN: Correct. But you have a ten mile plan and, therefore, one can say that there is a basis on which to extend it beyond in the state for which you have a plan.

We have other states where we have borders like that. I think that's the staff' concern.

MR. NEWBERRY: That is all I have on the petition, gentlemen.

MR. NOVAK: We will, I think at the next meeting, all of these meetings between ourselves are transcribed, we will be as clear and candid as we can with regard to rationale and our views, next week's meeting.

Also, in going back with regard to some of the tougher technical issues we have to deal with, I think if you feel we are not expressing ourselves clearly as we should, please let us know. We will let you know what our particular areas of concern are with regard to each of the rationales.

MR. STELLO: Let me ask a question that is clearly one that has come up from time to time. There is clearly a Massachusetts plan but not submitted. There is also the option that the licensee can take that plan or any other plan and develop his own plan.

If that is to be done, we are talking schedules, if that she is going to drop, it would be useful for all of us to get that she dropped last year. This year, this week, next month.

You know, it's going to happen, the faster we get that one on the table, I think the better off we all are, too.

It seems like a fair question, then, are you giving any consideration to submitting either the Massachusetts plan as modified by you or one that you have of your own or whatever?

MR. DERRICKSON: Well, I can give you the best answer. It's a tough question. We have looked at ranges of options.

If we were to submit a Massachusetts plan, today we are not sure what it needs to look like.

MR. STELLO: I know another that exists like it I can refer you to.

MR. DERRICKSON: I am --

MR. STELLO: There is one other facility that has written --

MR. DERRICKSON: Oh, we understand. But every situation is unique in terms of localities and particular facilities and so forth.

MR. STELLO: Oh, true.

MR. DERRICKSON: We have studied this and we continue to look at all options. There are some problems that have developed with Long Island with LILCO submitting their own planning as you know.

We try to take that into consideration, too. It's not as easy as sitting down and writing a plan for Massachusetts. It involves a lot more than that.

We evaluated alternatives. Frankly, based on our technical view of the plant our best alternative that we saw last year was to file the exception request to reduce the emergency planning zone to a mile.

It's technically sound, we believe that we will be able to prove it. If there is anything you need in the way of information or whatever, we will be able to deliver it.

I am convinced that that is the correct thing to do here, technically. And we have chosen that course.

And so that is kind of where we are today.

MR. BROWN: One other point. We don't know what the final rule-making is going to look like, exactly, what the procedures that are built into it are going to look like or even when it's going to come out. But in anticipation of that we are in the process --

MR. STELLO: What I said had nothing to do with the proposed rule change. Whether or not there is a change in the rule or not, the question remains because then you are making an argument with respect to the technical basis upon which to extrapolate and develop an emergency plan which is the issue before us technically.

Then we have a full ten mile EPZ plan -- we have a fully adjudicated EPZ for the state of New Hampshire. That is ongoing.

When you now look at the state of Massachusetts, have a plan for that state, combine that with the arguments with respect to the waiver request and as it relates to the issue we just discussed a moment ago dealing with the ad hoc issue, all of those become easier, technical issues to deal with when taken in totality rather than taken one at a time. At least that is a technical view.

It also is in my view critical with respect to timing. If you were to wait for example for the new rule to come out, that is a timing issue. That has got a 60-day comment period, comments are analyzed, it has to be reconsidered.

My experience with rule-making has never been such that it's ever done quickly. But there is nothing that I know of that precludes going forward without a rule. I said that like I was a lawyer, I am not.

If any lawyer disagrees with what I said. I think he waved his hand.

Is it all right?

All right. At least those considerations are something we ought to get on the table and make sure you weigh it, think about it very carefully and make that judgment.

It certainly impacts our workload, both in a positive way and a negative way. The faster the decision is made the better off we all are.

MR. DERRICKSON: Can I just turn this around and ask you a straight question?

MR. STELLO: Sure.

MR. DERRICKSON: I really want to understand where we are all coming from.

Are you in effect telling us that putting these detailed plans in to you for the state of Massachusetts would enhance or in fact support criterion four?

MR. STELLO: Would they help to support it? I think clearly.

MR. DERRICKSON: Is that the basis on which you are asking --

MR. STELLO: No. No, that was an additional consideration.

I wasn't recommending or suggesting, but getting it on the table that that clearly is another issue.

MR. DERRICKSON: I see.

MR. STELLO: If six months from now we are going to come around and say, well, here's the state plan. Now take that on and let's start getting that under -- out of the way, that obviously is an additional workload for us.

If we are going to have to do it I would just as soon do it and get on with it. If we are not going to do it, I guess I would just as soon know that and get on with that, too.

But I kind of get the impression it may -- it may even come. At least I would like you to think about it. If that is the way it ought to go, let's go that way. If not, that is fine, too.

MR. TURK: Let me tack on a footnote to what Mr. Stello said.

The petition as it stands now for the fourth rationale has one line in it. It stands to reason we can extrapolate beyond the one mile to take care of -- to go out further. That doesn't say very much.

If there is a basis, whether it's the Massachusetts plan which Massachusetts developed or some utility plan or something else, it would be nice for us to know what it is that gives you the confidence to say that you can extrapolate beyond the one mile your ad hoc plan.

MR. BROWN: All right. The fact that the state of Massachusetts has a generic plan that encompasses emergency plans for three other operating nuclear plants, we felt should have some bearing on this.

MR. STELLO: Let's not debate it here. I am sure it does. Whether that is enough or not, whether the judgment can be made on the strength of that argument or that and other arguments to the subcommittee, I don't think this is the kind of meeting to try to go through that rationale.

MR. BROWN: Sure.

MR. STELLO: I want to make sure the air is clear. It's clear to everybody there is another issue that hangs out there. What about it? Where does it stand? I want to make sure we got it on the table.

MR. DERRICKSON: Let us, let me say this. There will be several meetings held starting with next Wednesday's meeting. This should be the subject of a technical/legal discussion on the fourth rationale to be sure we all understand each other's concerns. I would tell --

MR. STELLO: I think I would invite also, I think the lawyers ought to sit down as well.

MR. DERRICKSON: Exactly.

MR. STELLO: And sort out procedurally what all that may or may not be, too.

MR. DERRICKSON: With respect to our submitting an emergency plan on behalf of the state of mass we have pondered this at great length.

Frankly, to be perfectly honest about it, we were quite concerned that you all would take that as a signal that, here is away to handle the emergency planning and the petition need not be reviewed any further and all work on it would be dropped.

Frankly, we don't believe submitting a plan for Massachusetts all by itself in conjunction with the currently accepted plan in the state of New Hampshire will get us there in a timely fashion.

Hence, the petition came in, and I think we need to have some assurances here that whatever we do, it's not going to impede the review of of our waiver request, no matter what else. That is of primary importance to us at this point.

MR. STELLO: I guess I tend to say what I think. So I ought to say what is on my mind.

Technically, being able to combine the strength of the legal argument with the fact that there is a licensing emergency plan that goes out ten miles in the state of Massachusetts I would think would allow a much better, much more persuasive argument. The combination of those things being from an overall technical point of view, better. That is on my mind. You seem to make it sound as though it is either/or. I don't know why it needs to be either/or.

MR. DERRICKSON: What I am hearing is, if I am hearing correctly, a commitment from you, Vick Stello, that if we do something like that, that the petition will move forward expeditiously.

MR. STELLO: Nothing I said in any way was intended to detract from our review of the petition. I hope I didn't leave that impression. We continue our review.

MR. DERRICKSON: You didn't. We are concerned because of limited resources. People's time has to be spent on something.

MR. STELLO: My point is that I think the amount of effort that has to be put in looking and doing these together rather than serially I think is also a resource saving. Let's not debate it.

MR. DERRICKSON: I appreciate it.

MR. EICHORN: Thank you, very much. Appreciate it.

MR. STELLO: Next item.

MR. DERRICKSON: I guess that really covers item E.

MR. STELLO: We are up to F, I think.

MR. DERRICKSON: We are up to F.

With respect to the rule-making I would just like to make a couple of comments. That I do believe your effort to modify the emergency planning rule as you have done by the proposal you gave to the Commissioners is to be commended.

I think certainly it helps clarify a fuzzy rule that was put into place in 1980, and to let you know that there are folks with you, I offer a few editorials from the Union Leader in Manchester, New Hampshire, to the New York Times. Then when we do those together we are doing all right. I would like to put that on the record.

MR. STELLO: I am not sure which pile is bigger, those for or against. I have heard quite a few comments the day of the Commission meeting.

MR. DERRICKSON: I was there.

MR. EICHORN: Mr. Stello you don't weigh those for weight, you weigh them for comments.

(Laughter.)

MR. STELLO: Okay.

MR. DERRICKSON: The only other item on the agenda here is your reorganization. I know that you have reorganized based on what you see as your need to keep up with the times, and that's fine.

We would just like to be sure there is no impact on the schedule of activities or licensing process for Seabrook. In whatever you do, that is our only request

MR. STELLO: Tom Murley is here and he has assured me with Jim Sniezek, sitting right next to him, it won't happen. Indeed, he just did.

(Laughter.)

MR. MURLEY: I don't anticipate any problems.

MR. STELLO: We understand there are projects for which there is an awful lot going on. We are being very mindful.

We are doing the best we possibly can. If there is any problem, you see any problem, give a call and let us be aware of it.

MR. DERRICKSON: For the record, when is Dr. Murley assuming his new position?

MR. STELLO: Your announcement says on or about the 15th of April. We are in the process of negotiating with the union. We want to give them 30 days to look at it. I believe that is up about the 12th of April, I think.

MR. MURLEY: I am planning on showing up April 13.

MR. DERRICKSON: It's not a Friday, is it?

MR. JORDAN: Monday.

MR. DERRICKSON: That is all we have except Mr. Eichorn has some closing remarks he would like to make.

MR. STELLO: Okay.

MR. EICHORN: I had a lot of closing remarks prepared. I don't see really the necessity for me to belabor and go through all these.

I think I want to leave with you the impression that you heard before. We feel the power is necessary and the need for this power is real today.

But the other thing we would like to leave with you is that the owners want to resolve all of these issues.

We are ready and willing to commit whatever resources are necessary on our part to do the speed did I resolution of these outstanding questions, and we expect and hope that you can do likewise.

MR. STELLO: Well, let me assure you, we want to do the best we can to resolve issues. I think we have made significant progress, that we are at the point on Seabrook where the emergency planning issue is essentially the only issue.

While there are clearly some administrative processes yet to be completed including Commission decision, the board, we will get those decisions eventually, we will know how they come out. But that will leave us with the most difficult complex issue.

We are prepared and have committed to review whatever proposals we wish to make and however you wish to make them, we will find a way to get the resources to do what we need to do.

That, however, does not relieve us from the responsibilities of satisfying our regulations. We are satisfied the facility, save the emergency planning issue, is safe.

I have not heard anyone who has suggested contrary to me. I am persuaded that is a fairly unanimous conviction of the staff.

But our rules require us to deal with emergency planning and that we must. How long and what are the right processes to get there, I don't know. I am sure you have struggled with that issue as well as we have.

We are prepared to continue to deal with it in whatever form it takes. We will do our best. But it's going to be a tough road.

Bear with it, be patient, we will do the best we can to get the review done as quickly as we can but we have got to do it right.

If we try and rush and get a review that doesn't stand up, we have failed to do our job and I don't think we have done the country any favor if we don't do an adequate regulatory job.

So we have got to do it and do it right. And we are going to do it. We will make sure we get the right people to do a good job and move on.

We urge you, though, to comment on the data. I would like you to see that very carefully. I seriously agree, time is important, too, because it does affect our resources and that is when it starts to hurt us.

When we can do things in parallel, it makes a lot more relaxed atmosphere than trying to do things in serial.

Plus I would not minimize the impact that would have on criterion four, too. I don't want to leave you with the impression it doesn't relate, it's insignificant. There is a relationship. Certainly we would go a long way in resolving that issue.

That is all I had to say.

MR. DERRICKSON: One other question. On the rule change that you have processed to the Commissioners do you have any feel for the timing on when a revised rule might be issued?

MR. STELLO: The only thing I know it when the comment period expires. From then on, how long it takes, I don't know.

We probably will be able to do an analysis of the comments and get that into the Commission fairly quickly.

The real issue will be how quickly the Commission can handle it. I think the comment period -- the 8th, 3rd, 5th, somewhere in there.

MR. EICHORN: On behalf of all the owners here we appreciate you and the staff coming to the meeting and being open and candid and frank with us. We will do everything we possibly can to expedite our portion of the procedure.

We share like you do, we don't want to build a plant that isn't safe. We think we have got the safest plant in the country.

MR. STELLO: It also has to meet the rules.

MR. EICHORN: Oh, yes.

MR. STELLO: Thank you.

(Whereupon, the meeting was adjourned at 3:25 p.m.)

CERTIFICATE OF OFFICIAL REPORTER

This is to certify that the attached proceedings before the UNITED STATES NUCLEAR REGULATORY COMMISSION in the matter of:

NAME OF PROCEEDING:	MANAGEMENT MEETING BETWEEN PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE AND NRC STAFF TO DISCUSS COMMON PROBLEMS
DOCKET NO.:	50-443
PLACE:	BETHESDA, MARYLAND
DATE:	WEDNESDAY, MARCH 18, 1987

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission.

(sigt) Craig L. Knowles
(TYPED)
CRAIG L. KNOWLES

Official Reporter
ACE-FEDERAL REPORTERS, INC.
Reporter's Affiliation

MAR 1 9 1987

Docket Nos. 50-443

APPLICANT: Public Service Company of New Hampshire (PSNH)

FACILITY: Seabrook Station, Unit 1

SUBJECT: MEETING SUMMARY

On March 18, 1986, the NRC staff met with certain of the joint owners of Seabrook Unit 1 to discuss Seabrook Unit 1 licensing issues. A transcript, attendance roster of this meeting and slides used in this meeting are enclosed.

Victor Nerses, Project Manager
PWR Project Directorate #5
Division of PWR Licensing-A

Enclosures:
As stated

cc: Mr. Robert J. Harrison
See next page

ITEM M

Fortuna Investigation

Allegation

A slush fund for information was established even though the general counsel had warned that it raised significant policy questions.

Response

A letter was written to Senator Glenn on April 14, 1989 explaining my position. In that letter I stated that the Director of the Director of the Office of Inspector and Auditor came to me in August of 1988 to solicit my help in an investigation she was initiating regarding new allegations by Mr. Ellison. Mr. Ellison had alleged wrongdoing by NRC employees (one of whom was Mr. Fortuna) and also alleged that NRC had not adequately addressed safety issues he had previously provided to NRC. Furthermore, OIA reported that Mr. Ellison said he had new safety allegations which had not previously been provided. The Director of OIA informed me that Mr. Ellison would not cooperate and provide all of the information unless he was reimbursed. I approved the establishment of an imprest fund to support the investigation of the Ellison allegations. I approved the suggestion that he be paid in cash since the cutting of a government check could have compromised the conifdentiality of Mr. Ellison's name. I discussed the matter of my authority with the NRC General Counsel, Mr. William Parler, who confirmed that I had such authority. We did not discuss specifics concerning the proposed contractor or the subjects of the investigation.

By way of background, Mr. Ellison in 1986, made allegations involving a number of activities in violation of safety regulations with which he had direct knowledge and information. Many of these allegations were substantiated by subsequent inspections by NRC. A number of these allegations resulted in identification of violations of NRC requirements, which eventually culminated in the payment of a $50,000 civil penalty by the licensee in May 1987. The new safety allegations received in August 1988, also were reviewed and evaluated by the NRC staff. These allegations were substantiated in part and in one case a violation of NRC requirements was found. A copy of the inspection report dated July 18, 1989 is attached as well as my letter to Senator Glenn. My letter also states that:

> Although I recognized at the time that I authorized the contract with Mr. Ellison that my involvement in an OIA investigation of allegations against members of the OI staff could be misperceived by some and probably criticized, my overriding concern was to assure public health and safety....I am convinced that I acted in the best interest of safety and responsible management....As I stated, I was aware that my action might well, because of misperceptions, lead to an investigation such as the present one. However, I would much rather respond to this investigation than to the one which would occur had I not pursued safety allegations which were later determined to have contributed to an accident.

ITEM N

Material False Statement

Allegation

Changing NRC's processing of Material False Statements

Response

In March 1984, before I was named acting EDO (January 1986) after several years of handling enforcement cases under the VEPCO holding,[1] the Commission specifically solicited public comments on the issue of material false statements. 49 Fed. Reg. 8584, March 1984. (It will be recalled that in the VEPCO case, 4 NRC 480, the Commission held that:

- **a statement is "material" if it has a natural tendency to influence--not whether it does so in fact--the person or body to whom it is submitted;**
- **a statement may be "false" even if it is made without knowledge of its falsity; and**
- **the term "statement" includes an omission.**

The Commission's determination was upheld by the U. S. Court of Appeals for the Fourth Circuit.)

In view of the Commission's developing concern, principally with the application of the "material false statement" label to unintentionally inaccurate information, and after receiving comments evidencing similar concerns by the public and the Commission's own Advisory Committee on March 11, 1987, the

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[1] Virginia Electric's Power Company (North Anna Power Station, Units 1 and 2), CL1-76-22, 4 NRC 480 (1976), aff'd 571 F.2d. 1289 (4th Cir. 1978)

Commission determined to make certain changes both in the manner in which its standards for accuracy in information are articulated for licensees and applicants and in its material false statement policy. As the Commission explained in publishing its proposed rule on Completeness and Accuracy of Information:

> A charge of material false statement is equated by the public and most people in the industry with lying and intention to mislead. Yet under the current policy, a material false statement under the Atomic Energy Act can be either an affirmative statement, oral as well as written, or an omission, and can be unintended and inadvertent as well as international (sic). The Advisory Committee [for review of the enforcement policy] concluded that enforcement of accuracy in communications by citations for a material false statement is too blunt and heavy an instrument to be effective in achieving improved accuracy and completeness of information given to the NRC by licensees. The Commission agrees. The free flow of information from applicants and licensees is essential to the effectiveness of the NRC's regulatory program. A policy of sanctions for inaccurate information which has the likelihood to impede information flow, or which causes licensees to concentrate on limiting and qualifying what they say rather than on the quality of the information provided in order to avoid being charged with lying, does not serve the interests of the NRC.

52 Federal Register 7432, at 7436, March 11, 1987.

I support the rule, as approved by the Commission. (52 FR 49 362).

I would also like to comment on the position taken by some that Mr. Ellison's conviction for a sex offense should have caused me to reject his allegations. I believe the agency would be negligent to dismiss allegations based solely on personal circumstances. This principle is especially true with regard to Mr. Ellison. Based on his previously substantiated allegations and the fact that his new allegations were in some cases supported by physical evidence -- that is tapes, logs and documents, I reasonably believed he had factual information about nuclear safety problems and therefore concluded that an investigation was necessary.

This investigation of potential improprieties by Mr. Fortuna by a special inquiry has not been completed; therefore, no conclusion has been reached regarding this matter.

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

APR 14 1989

The Honorable John Glenn, Chairman
Committee on Governmental Affairs
United States Senate
Washington, DC 20510-6250

Dear Mr. Chairman:

I am responding to your letter of April 5, 1989 in which you ask numerous questions about my involvement in an investigation related to the Office of Inspector and Auditor (OIA) at the Nuclear Regulatory Commission (NRC). I am pleased to have the opportunity to provide this response. I believe it is important to describe fully and in proper context the facts, issues, and decisions made during this investigation.

Mrs. Connelly came to see me in August of 1988 to solicit my help in an investigation she was initiating regarding new allegations by Mr. Douglas Ellison. Mr. Ellison had alleged wrongdoing by NRC employees (one of whom was Mr. Fortuna) and also alleged that NRC had not adequately addressed safety issues he had previously provided to NRC. Furthermore, Mrs. Connelly reported that Mr. Ellison said he had new safety allegations which had not previously been provided.

As you are now aware, and as I knew in 1987, Mr. Ellison was an instrument and control technician employed by Niagara Mohawk Power Corporation at the Nine Mile Point Unit 1 facility when he first made allegations in 1986 involving a number of activities with which he had direct knowledge and information. Many of these allegations were substantiated by subsequent inspections by the Nuclear Regulatory Commission. A number of these allegations resulted in the identification of violations of NRC requirements, which eventually culminated in the payment of a $50,000 civil penalty by Niagara Mohawk Power Corporation in May 1987. Therefore, Mr. Ellison had demonstrated that he indeed did have factual information which led to confirmation that NRC requirements were violated at the Niagara Mohawk Nine Mile Point Unit 1 facility.

Mrs. Connelly informed me that Mr. Ellison would not cooperate and provide all of the information he had unless he was reimbursed for his effort. It was her understanding that the only way this could be accomplished was to reimburse him under a contractual arrangement for his time and expenses. Since she did not have the authority to approve such a contract, she requested that I do so if I determined it was necessary to conduct the agency's business. I discussed the matter of my authority with the NRC General Counsel, Mr. William Parler, who confirmed that I had such authority. We did not discuss specifics concerning the proposed contractor or the subjects of the investigation.

Mrs. Connelly also requested that I provide someone on my staff to assist in arranging the administrative, contractual, and financial details involved in any arrangement with Mr. Ellison. She did not want to use other members of her staff because she was concerned that details of the investigation would be leaked to the Office of Investigations (OI). She believed it was critical to keep Mr. Ellison's name confidential since acknowledgement that OIA was pursuing his allegations might compromise the investigation. I chose Mr. James Blaha to assist Mrs. Connelly because I trusted him, he was between assignments, and he was familiar with contractual and financial processes. Mr. Blaha also was familiar with handling of agency safety issues and allegations and therefore could provide me with information on potential safety issues.

At this point I was not ready to approve proceeding with the contractual arrangement. I wanted additional substantiation that Mr. Ellison's allegations warranted further pursuit. Mrs. Connelly and I agreed that she, her Assistant Director, Mr. Mark Resner, and Mr. Blaha would interview Mr. Ellison near his home at Daytona Beach, Florida. This was done on August 29 and 30, 1988. Upon their return they briefed me on the results of their interview. They reported that Mr. Ellison had dozens of tape recordings and boxes of documents which he believed supported his allegations. Mr. Blaha informed me that there was additional information regarding new safety allegations for Nine Mile Point Unit 1 related to:

A. An unreported fire in the reactor dry well
B. Use of drugs by employees at the facility
C. A safety pump that may not work
D. Control rod pump drive problems
E. Inadequate security of the process computer system
F. Previous allegations not handled adequately by NRC Region I and the Office of Investigation

The potential safety significance of these allegations, if they are substantiated, is clear. For example, a fire in a reactor dry well raises serious questions about: the potential damage caused by the fire itself; the circumstances which allowed the fire to start; the adequacy of plant procedures intended to prevent fires; compliance with such procedures; and the possible cover-up of the fire's occurrence. Also, employees who use drugs and perform any plant safety functions are clearly unacceptable in a nuclear power plant.

Each of the other topics above also raises serious concern about adherence to procedures, records falsification, status of maintenance, and the general attitude about safety at the plant. A significant portion of the escalated enforcement actions taken by the NRC over the years has involved similar issues. More important than each specific allegation is the concern that an organizational culture may exist which does not place proper emphasis on safety issues, especially with regard to procedures, quality assurance, and conduct of maintenance.

At the time Mr. Blaha briefed me on these new allegations, Nine Mile Point Unit 1 had been shut down since December 1987 but was projected to start up again in the fall of 1988. For that reason, I felt it was important to promptly pursue these allegations; therefore, I approved the contract.

During the course of subsequent interviews with Mr. Ellison, Mr. Blaha kept me informed of additional information about safety issues. Because the projected startup date for the plant had slipped, there was no immediate need to address these issues. Mr. Blaha documented the safety issues during the interviews with Mr. Ellison with the intent that they would be pursued by the NRC before startup. At that time, it was expected that the investigation of employee misconduct would be completed and the need for confidentiality would end well before the plant would be ready for startup. However, the current projected startup date is for the summer of this year. In recognition of the near-term startup of the plant, I have asked James Taylor, my Deputy, to request Mr. Rosenthal to make the information regarding these new allegations, gathered by Mr. Blaha and others, available to Mr. Taylor so that these issues can be pursued by the technical staff prior to the startup of the facility.

Although I recognized at the time that I authorized the contract with Mr. Ellison that my involvement in an OIA investigation of allegations against members of the OI staff could be misperceived by some and probably criticized, my overriding concern was to assure public health and safety. I was also, of course, concerned about the possibility that members of my staff might be compromising sensitive investigative information, and thus I felt that this matter needed to be investigated. In fact, had this information come to my attention from other sources, I would have requested an OIA investigation. In no way have I attempted to influence or steer the course of the OIA investigation. I am convinced that I acted in the best interest of safety and responsible management, given what I was told about Mr. Ellison's willingness to cooperate and the nature of his allegations.

As I stated, I was aware that my action might well, because of misperceptions, lead to an investigation such as the present one. However, I would much rather respond to this investigation than to the one which would occur had I not pursued safety allegations which were later determined to have contributed to an accident.

I trust my explanation is responsive to your concerns. Responses to your specific questions are enclosed.

Sincerely,
Original signed by
Victor Stello, Jr.
Victor Stello, Jr.
Executive Director
for Operations

Enclosure:
Answers to Questions

cc: Senator William V. Roth, Jr.

Distribution
Commissioners
OGC
SECY
EDO
Judge Rosenthal

OFC	EDO					
NAME	VStello					
DATE	4/14/89					

QUESTION 1. Please describe your knowledge concerning the Ellison allegations and the agency's internal investigation of those allegations during the period August 5, 1988 through February 23, 1989. In particular, please address:

When did you learn of all or a portion of the Ellison allegations?

- Who informed you concerning these allegations?
- What did you learn from Mrs. Connelly?
- What did you learn from General Counsel William Parler?
- What did you learn from Mr. James Blaha?
- What did you know about the allegations during the period August 5, 1988 through February 23, 1989?
- What did you know about the agency's internal investigation of these allegations during that same period?

ANSWER.

In mid to late August 1988, Mrs. Connelly requested my help in an investigation she was initiating because of allegations she received from Mr. Ellison. She indicated that Mr. Ellison alleged wrongdoing by NRC employees, including Roger Fortuna; that he also alleged that NRC had not adequately addressed the safety issues that he had provided in 1986; and that he had additional safety allegations that had not previously been provided to the NRC. Mrs. Connelly informed me that Mr. Ellison would not cooperate and provide all of the information he had unless he was in some way reimbursed for his efforts. She explained that Mr. Ellison was having significant financial difficulty and emphasized that he was not prepared to spend time and effort explaining these allegations without being reimbursed for his services. Mrs. Connelly further explained that she did not have the authority to enter into a contract for this purpose, but it was her understanding that I, in fact, did have the authority to do this if I determined that it was necessary for the conduct of agency business.

During my discussion with Mrs. Connelly, I made it clear that I saw a division of responsibility with regard to the investigation of Mr. Ellison's allegations. Mrs. Connelly was responsible for employee wrongdoing issues. I, on the other hand, would be responsible for pursuing safety issues. I concluded the discussion and indicated that I would go forward with a contract when I had information to suggest there were safety issues that warranted further regulatory action.

I then decided that Mr. Blaha, who was between assignments and readily available, could accompany Mr. Resner and Mrs. Connelly to interview Mr. Ellison near his Daytona Beach, Florida, residence to get further information regarding these allegations. Mr. Blaha was chosen because of his familiarity with administrative, contractual, and financial processes and his general familiarity with the handling of agency safety issues and allegations. I had complete confidence and trust in Mr. Blaha's ability to do the job and to maintain the strict confidence that Mrs. Connelly indicated was necessary.

Glenn/EDO
04/11/89

During a meeting in late August (and prior to the trip to Florida), Mrs. Connelly, Mr. Parler, myself, and possibly either Mr. Herr or Mr. Resner discussed alternative ways to get the infromation from Mr. Ellison, including the use of a subpoena. Mrs. Connelly believed that issuing a subpoena was not a viable option because Mr. Ellison's cooperation was necessary for the information he had to be of value. As I indicated earlier, she believed Mr. Ellison's cooperation without reimbursement was not possible. The meeting concluded with my believing that the only viable option for obtaining the information was to enter into a contract with Mr. Ellison to obtain the cooperation necessary for getting useful information.

I recall that during this discussion I noted that Mr. Ellison had previously provided allegations regarding safety issues at Nine Mile Point Unit 1 and that some of these allegations were substantiated. In particular I recall stating that Mr. Ellison's allegation that he had used an unqualified Radio Shack connector in the reactivity control system of the Nine Mile Point Unit 1 reactor was substantiated. (This system is an important safety system in the plant because it is relied on for shutting down the reactor in an emergency.)

I asked Mr. Parler to confirm that I had authority to enter into a contract to obtain safety-related information. I relied on his assurance that I indeed had the legal authority to enter into a contract to obtain information that I determined to be necessary to carry out the agency's public health and safety responsibilities.

Glenn/EDO
04/11/89

Mr. Blaha, Mr. Resner, and Mrs. Connelly then spent a day talking to Mr. Ellison near his Florida residence. As I have explained in my cover letter, upon his return from that visit, Mr. Blaha informed me that there were new safety allegations.

At that point, given Mr. Blaha's description of the dozens of tape recordings and documents that Mr. Ellison possessed, I had no reason to doubt that Mr. Ellison would in fact provide important safety information regarding various activities at the Nine Mile Point Unit 1 facility. This judgment was reinforced because a number of allegations made by Mr. Ellison in 1986 were substantiated and showed that violations of our requirements existed and eventually led to a $50,000 civil penalty that was paid by Niagara Mohawk Power Corporation.

In summary, before authorizing the contract I was persuaded that there were safety issues that had to be pursued, and I was aware that there were serious allegations regarding the mishandling of investigations by NRC employees, including Mr. Fortuna. Before authorizing the contract I was aware that there were recorded conversations with Mr. Fortuna that raised serious questions in my mind regarding his conduct. I recall specifically pointing out to Mrs. Connelly that the issues of the investigation of NRC employees' misconduct was her responsibility, but that in my judgment the conduct of an investigation was warranted.

Glenn/EDO
04/11/89

After Mr. Blaha briefed me, I received a memorandum from Mrs. Connelly dated September 1, 1988. It requested that I set up a consulting contract with Mr. Ellison. I authorized that contract, and it was issued on September 1, 1988.

During the conduct of the investigation, I was informed from time to time by both Mr. Blaha and Mrs. Connelly, in very general terms, of the overall status of the investigation. Mr. Blaha provided some additional details regarding Mr. Ellison's belief that our investigation of his earlier allegations was not thorough and, in some cases, had been incorrect. He provided details regarding Niagara Mohawk's failure to report information to the NRC that, in Mr. Ellison's opinion, should have been reported. Mr. Blaha indicated that from the documents and recordings provided he believed there was substantial evidence that the Niagara Mohawk Power Corporation had intimidated and harassed Mr. Ellison because of his pursuit of safety allegations. Mr. Blaha also indicated that the large bulk of Mr. Ellison's materials related primarily to technical and safety issues.

Mrs. Connelly also kept me informed of the status of the investigation, including her interactions with the FBI to determine if parts of the investigation should be taken over by the FBI. I was also made aware that she had contacted the Department of Justice for its consideration of potential criminal wrongdoing. I was kept informed of attempts to interview Mr. Fortuna during January/February 1989. These attempts eventually culminated in the proposed removal of Mr. Fortuna from his position for failure to comply with a management directive to appear for an on-the-record interview.

Glenn/EDO
04/11/89

QUESTION 2: What did you know about Mr. Ellison's (a) background, (b) history with Region I, OI and OIA, (c) allegations and/or convictions concerning sexual offense(s), and (d) employment status and financial condition during the period August 5, 1988 through February 23, 1989? Who informed you concerning Mr. Ellison? When were you so informed?

ANSWER:

(a) I knew Mr. Ellison had been employed as an instrumentation and control technician at the Niagara Mohawk Nine Mile Point Unit 1 facility.

(b) As I explained in the cover letter, I was aware of the allegations Mr. Ellison made to Region I and OI in 1986-1987. I am aware that the Region and OI pursued these allegations, many of which were substantiated. I am also aware that we advised Mr. Ellison to pursue his intimidation and harassment charges with the Department of Labor, which he subsequently did, and I understand that he reached a settlement with the company.

(c) Prior to August 5, 1988, I was made aware in general terms that there were allegations regarding unusual behavior by Mr. Ellison. I cannot recall any specifics concerning those allegations, nor can I recall who first informed me of them. Most likely it was Dr. Thomas Murley (the Administrator of NRC Region I) sometime in 1986 or 1987. Upon his return from Florida Mr. Blaha informed me that Mr. Ellison had pleaded guilty to some charge pertaining to sexual misconduct with a minor. I never focused on any specifics concerning Mr. Ellison's sexual offenses until the issue was raised as part of your investigation. I did not consider it relevant to whether Mr. Ellison possessed safety significant information, in light of the fact he had already provided NRC with substantiated safety allegations.

(d) Before I approved the consulting contract with Mr. Ellison, Mrs. Connelly informed me that Mr. Ellison was unemployed and was having difficulty providing for his family.

Glenn/EDO
04/11/89

QUESTION 3. What was your relationship to the fund established to make the payments related under the consulting arrangement and any other payments related to the agency's internal investigation of the Ellison allegations (FIN: B8169, "Support for DEDROGR")? Did you ever refuse to allow such fund to be audited by any component of the agency? If so, why?

ANSWER.

I approved the establishment of an imprest fund to support expenses related to the agency's internal investigation of the Ellison allegations. I approved the suggestion that Mr. Ellison be paid in cash since the cutting of government checks could have compromised the confidentiality of Mr. Ellison's name. I also approved the obligations and payments from that imprest fund. Mr. James Blaha was the subcashier who managed the fund.

At no time did I refuse to allow the imprest fund to be audited by any component of the agency. I understand that there was one occasion when a fund verification was deferred. The Controller, Ronald M. Scroggins, who is familiar with the situation, has provided the following statement regarding this question:

> This fund was established on August 31, 1988 by the staff with monies from Financial Identification Number (FIN) B8169, Support for Deputy Executive Director for Regional Operations and Generic Requirements (DEDROGR) as an administrative convenience since it had been in existence for the last few years. The staff who selected the FIN had no knowledge of the subject of the investigation.

Glenn/EDO
04/11/89

The fund was a subcashier imprest fund with Mr. James Blaha designated as the subcashier. This designation and advance of funds from the principal cashier was accomplished in accordance with established procedures.

Unannounced audits of NRC imprest funds are conducted by the Office of Inspector and Auditor (OIA) at least once a year. Since the subcashier's imprest fund was in existence for only about a month, the fund was not in existence when the OIA audits were performed in 1988.

However, on September 14, 1988 in accordance with established procedures, a member of my staff planned to perform the quarterly verification of the headquarters imprest funds. Since I had been informed that the subcashier's imprest fund would be closed out prior to September 30, 1988, I knew a close-out verifications would be required. I informed my staff member that it did not appear necessary to verify the fund at this time and again in a few weeks. Subsequently, I personally verified the imprest fund on September 26, 1988 and it was also independently verified by the principal cashier on that date as part of the subcashier imprest fund close-out process in accordance with established procedures.

Glenn/EDO
04/11/89

OFFICE OF THE SECRETARY
CORRESPONDENCE CONTROL TICKET

ER NUMBER: CRC-89-0304 LOGGING DATE: Apr 7 89

TION OFFICE: EDO

AUTHOR: J. Glenn
AFFILIATION: UNITED STATES SENATE

LETTER DATE: Apr 5 89 FILE CODE: O&M-2 OI

SUBJECT: NRC's handling of OIA investigation of OI

ACTION: Signature of EDO

DISTRIBUTION: OCA to Ack, Cmrs, OGC, Secy

SPECIAL HANDLING: Addressed to: Stello

NOTES: Commission review prior to dispatch

DATE DUE: Apr 11 89

SIGNATURE: DATE SIGNED:
AFFILIATION:

JOHN GLENN, OHIO, CHAIRMAN

SAM NUNN, GEORGIA
CARL LEVIN, MICHIGAN
JIM SASSER, TENNESSEE
DAVID PRYOR, ARKANSAS
JEFF BINGAMAN, NEW MEXICO
HERBERT KOHL, WISCONSIN
JOSEPH LIEBERMAN, CONNECTICUT

WILLIAM V. ROTH, JR., DELAWARE
TED STEVENS, ALASKA
WILLIAM S. COHEN, MAINE
WARREN B. RUDMAN, NEW HAMPSHIRE
JOHN HEINZ, PENNSYLVANIA
PETE WILSON, CALIFORNIA

LEONARD WEISS, STAFF DIRECTOR
JO ANNE BARNHART, MINORITY STAFF DIRECTOR

United States Senate
COMMITTEE ON
GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

April 5, 1989

Mr. Victor Stello, Jr.
Executive Director for Operations
Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Stello:

As you know, I am reviewing the Nuclear Regulatory Commission's handling of an internal investigation involving allegations raised by Douglas Ellison in August 1988. According to an internal OIA document dated August 5, 1988, these included allegations against Roger Fortuna and others.

In order for me to complete this review, I would appreciate receiving the answers to the following questions no later than close of business on April 14, 1989:

1. Please describe your knowledge concerning the Ellison allegations and the agency's internal investigation of those allegations during the period August 5, 1988 through February 23, 1989. In particular, please address:

When did you learn of all or a portion of the Ellison allegations?
Who informed you concerning these allegations?
What did you learn from Mrs. Connelly?
What did you learn from General Counsel William Parler?
What did you learn from Mr. James Blaha?
What did you know about the allegations during the period August 5, 1988 through February 23, 1989?
What did you know about the agency's internal investigation of these allegations during that same period?

2. What did you know about Mr. Ellison's (a) background, (b) history with Region I, OI and OIA, (c) allegations and/or convictions concerning sexual offense(s), and (d) employment status and financial condition during the period August 5, 1988 through February 23, 1989? Who informed you concerning Mr. Ellison? When were you so informed?

Mr. Victor Stello, Jr.
April 5, 1989
Page Two

3. What was your relationship to the fund established to make the payments under the consulting arrangement and any other payments related to the agency's internal investigation of the Ellison allegations (FIN: B8169, "Support for DEDROGR")? Did you ever refuse to allow such fund to be audited by any component of the agency? If so, why?

I would appreciate your prompt attention to this matter.

Sincerely,

John Glenn

John Glenn
Chairman

Ellison Rpt

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406

Docket No. 50-220 18 JUL 1989

Niagara Mohawk Power Corporation
ATTN: Mr. Lawrence Burkhardt, III
Executive Vice President - Nuclear
301 Plainfield Road
Syracuse, New York 13212

Gentlemen:

Subject: Inspection Report No. 50-220/89-16

This letter transmits the results of the Special Team Inspection (STI) led by Mr. Glenn Meyer of this office from May 22, 1989, to May 26, 1989, at Nine Mile Point Unit 1, Scriba, New York. A summary of the findings was presented to Mr. Kim Dahlberg and other members of your staff at the conclusion of the inspection.

The team evaluated additional allegations by a former Unit 1 technician concerning problems during 1986. Our review noted that Niagara Mohawk Power Corporation (NMPC) was previously made aware of some of these issues. The team conducted an independent site inspection and concluded that specific facts in the allegations were in part substantiated and with one exception did not constitute violations of NRC requirements. One non-cited violation was identified regarding the lack of proper administrative paperwork to document pressure switch calibrations performed on August 9, 1985. The NRC also concludes that weaknesses in work control associated with HPCI switch calibration and welding in the drywell are additional examples of the failure of NMPC in 1986 to aggressively identify and correct problems. These additional examples would not have changed the enforcement action taken based upon Inspection Report 50-220/86-17.

The NRC is also concerned that the NMPC Fitness for Duty Program, implemented pursuant to the NRC's policy statement, has not been effective in detecting or deterring illegal drug use. The team found that three of six individuals alleged to have used illegal drugs in 1986 subsequently tested positive during NMPC's 1988 investigation, substantiating in part the allegation that illegal drugs were likely used and that NMPC's Fitness for Duty Program in effect at the time did not detect their use. The team concluded that NMPC's investigations in 1988 of illegal drug use by NMPC personnel and the resultant actions appeared consistent with the NMPC Fitness for Duty Program as revised in April 1987. The Fitness for Duty Program is currently being upgraded to meet NRC's new rules on Fitness for Duty (10 CFR Part 26) and will be the subject of subsequent inspections.

We appreciate your cooperation. No reply to this letter is required.

Sincerely,

Samuel J. Collins, Deputy Director
Division of Reactor Projects

Enclosure: NRC Region I Inspection Report No. 50-220/89-16

Enclosure 1

Docket No. 50-220

Niagara Mohawk Power Corporation
ATTN: Mr. Lawrence Burkhardt, III
Executive Vice President - Nuclear
301 Plainfield Road
Syracuse, New York 13212

Gentlemen:

Subject: Inspection Report No. 50-220/89-16

This letter transmits the results of the Special Team Inspection (STI) led by Mr. Glenn Meyer of this office from May 22, 1989, to May 26, 1989, at Nine Mile Point Unit 1, Scriba, New York. A summary of the findings was presented to Mr. Kim Dahlberg and other members of your staff at the conclusion of the inspection.

The team evaluated additional allegations by a former Unit 1 technician concerning problems during 1986. Our review noted that Niagara Mohawk Power Corporation (NMPC) was previously made aware of some of these issues. The team conducted an independent site inspection and concluded that specific facts in the allegations were in part substantiated and with one exception did not constitute violations of NRC requirements. One non-cited violation was identified regarding the lack of proper administrative paperwork to document pressure switch calibrations performed on August 9, 1985. The NRC also concludes that weaknesses in work control associated with HPCI switch calibration and welding in the drywell are additional examples of the failure of NMPC in 1986 to aggressively identify and correct problems. These additional examples would not have changed the enforcement action taken based upon Inspection Report 50-220/86-17.

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We appreciate your cooperation. No reply to this letter is required.

Sincerely,

Original Signed by William F. Kane

For Samuel J. Collins, Deputy Director
Division of Reactor Projects

Enclosure: NRC Region I Inspection Report No. 50-220/89-16
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cc w/encl:
Connor & Wetterhahn
Gary D. Wilson, Senior Attorney
C. Mangan, Senior Vice President
J. Willis, General Superintendent
K. Dahlberg, Station Superintendent, Unit 1
R. Abbott, Station Superintendent, Unit 2
R. Randall, Unit 1 Superintendent of Operations
R. Smith, Unit 2 Superintendent of Operations
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C. Beckham, Manager Nuclear Quality Assurance Operations
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Region I Docket Room (with concurrences)
Management Assistant, DRMA (w/o encls)
J. Johnson, Section Chief, DRP
M. Slosson, Licensing Project Manager, Unit 1 and 2
State Liaison Officer (SLO)
J. Dyer, EDO, Regional I Coordinator
Judge A. Rosenthal, ASLAP
C. White, RI OI
Allegation File RI-89-A-0043

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RI:DRP	RI:DRP	RI:DRP	RI:DRP
Meyer	Johnson	Linville	Collins
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U.S. NUCLEAR REGULATORY COMMISSION

REGION I

Report No. 50-220/89-16

License No. DPR-63

Licensee: Niagara Mohawk Power Corporation
301 Plainfield Road
Syracuse, New York 13212

Facility: Nine Mile Point Unit 1

Location: Scriba, New York

Dates: May 22 - 26, 1989

Inspectors: Charles Marschall, Senior Resident Inspector, Ginna
Wayne Schmidt, Senior Resident Inspector, FitzPatrick
Robert Temps, Resident Inspector
Maitri Banerjee, Project Engineer

Team Leader: Glenn W. Meyer Date
Senior Resident Inspector, Hope Creek

Approved by: Edward C. Wenzinger, Chief Date
Projects Branch No. 2, DRP

INSPECTION SUMMARY

Areas Inspected: An announced Special Team Inspection reviewed additional allegations from a former Unit 1 I&C technician concerning the reliability of HPCI pumps, a 1986 drywell fire, 1986 Monthly Operating Reports, and 1986 illegal drug use. The inspection involved 124 hours.

Results: The team concluded that while specific facts in the allegations on HPCI, a drywell fire, and Monthly Operating Reports were in part substantiated, those facts did not constitute violations of NRC requirements. The team concluded that NMPC investigations of illegal drug use by NMPC personnel and the resultant actions appeared consistent with the NRC revised Fitness for Duty Program. One non-cited violation was identified regarding the lack of proper administrative paperwork to document pressure switch calibrations performed on August 19, 1985. An Executive Summary is provided as Section 1.

1. EXECUTIVE SUMMARY

Background:

Allegations were made to NRC personnel in 1988 by an individual previously employed as an I&C technician at Nine Mile Point Unit 1. These allegations were in addition to numerous concerns expressed by the same individual in 1986 that were the subject of a 1986 NRC special team inspection documented in Inspection Report 50-220/86-17. Additionally, the alleger had previously discussed some of the new allegations directly with Niagara Mohawk Power Corporation (NMPC) investigators in 1988.

Review of Allegations:

A concern was expressed about the calibration of oil pressure switches on HPCI pumps and the resultant unreliability of the HPCI pumps to properly start. The team concluded that the allegation of HPCI unreliability was unsubstantiated based primarily on the numerous examples of acceptable HPCI initiations. Further, a current I&C technician who had originally raised the concern was interviewed and stated that his concern had been acceptably resolved by NMPC; the team independently reviewed and agreed with the NMPC resolution. The team noted during its review that a Work Request covering the questioned calibration in August 1985 was lacking and concluded that this represented a non-cited violation of NRC requirements.

A concern was expressed that a fire occurred in the drywell in April 1986, which was not reported to the NRC. The team concluded that although three fires occurred during the referenced period, they were not reported because there was no NRC requirement to report them. The fires did not affect safety-related equipment and were extinguished within ten minutes, the limit in NMPC emergency planning procedures after which an Unusual Event must be declared and reported. Accordingly, the allegation that an April 1986 drywell fire should have been reported was unsubstantiated. This allegation had also been brought to NMPC by the alleger in July 1988.

A concern was expressed that Monthly Operating Reports for the period of April 1986 to July 1986 were inaccurate in that they did not report some Local Power Range Monitor (LPRM) maintenance. The team concluded that there was no regulatory requirement to provide such information and that information regarding procedure violations during LPRM maintenance was already known to NRC inspectors, and thus the omitted information did not represent a safety concern. Regarding the intentional omission of the information from the monthly report, the team did not substantiate this allegation. Therefore, the allegation that LPRM maintenance was intentionally omitted from Monthly Operating Reports because NMPC knew the LPRM work was in violation of procedures was unsubstantiated.

A concern was expressed regarding illegal drug use in 1986. In response to this issue, the NRC turned over to NMPC management the specific information on six individuals who had allegedly used drugs and two individuals who had allegedly been aware of drug use. The licensee had previously conducted an investigation in this area as a result of an anonymous allegation received in 1988. The team reviewed the 1988 NMPC investigation, which had covered five of the six individuals alleged to be using drugs. Four individuals had previously taken drug tests; three had tested positive and one of these three had been fired for drug possession. Of the two individuals alleged to be aware of drug use, one denied any such knowledge and the other died in 1985. The results of the NMPC investigation substantiated, in part, the concern that drugs were likely used and that the Fitness for Duty Program in effect at that time did not detect their use. The concern regarding NMPC not carrying out their drug testing program due to lack of random or periodic drug tests was based on the false premise that such testing was required. In fact, NMPC did not have such a program in place at that time and was not required to do such testing. The team concluded that the NMPC investigation and the personnel actions resulting from it appeared consistent with the revised (April 1987) NMPC Fitness for Duty Program. The team noted that the NMPC Fitness for Duty Program, revised in April 1987, is currently being upgraded to meet the newly imposed requirements of 10 CFR Part 26.

Conclusions:

The team concluded that while specific facts in the allegation on HPCI, a drywell fire, and Monthly Operating Reports were in part substantiated, and with one exception did not constitute violations of NRC requirements. The NRC concludes that weaknesses in work control associated with HPCI switch calibration and welding in the drywell are additional examples of the failure of NMPC in 1986 to aggressively identify and correct problems.

The NRC is concerned that the NMPC Fitness for Duty Program, implemented pursuant to the NRC's policy statement, has not been effective in detecting or determining illegal drug use. The team found that three of six individuals alleged to have used illegal drugs in 1986 subsequently tested positive during NMPC's 1988 investigation, substantiating in part the allegation that illegal drugs were likely used and that NMPC's Fitness for Duty Program in effect at the time did not detect their use. The team concluded that NMPC's investigations in 1988 of illegal drug use by NMPC personnel and the resultant actions appeared consistent with the NMPC Fitness for Duty Program as revised in April 1987. The Fitness for Duty Program is currently being upgraded to meet NRC's new rule on Fitness for Duty (10 CFR Part 26) and will be the subject of subsequent inspections.

2. BACKGROUND

On July 11, 1986, an instrument & controls (I&C) technician ("the alleger") at Nine Mile Point Unit 1 (NMP-1) approached the NRC resident inspector with numerous allegations. On July 15, 1986, the alleger related the allegations directly to Niagara Mohawk Power Corporation (NMPC) management and subsequently provided transcribed testimony to NRC Region I on the allegations on July 22, 1986.

The allegations were reviewed during a special team inspection during August 25-29, 1986, which documented the events prior to the inspection and its findings in Inspection Report 50-220/86-17; 50-410/86-61. That team concluded that "most of the allegations were factually correct, however their safety implications were subsequently determined to be minor." The findings of the special team inspection were included in the basis for a $50,000 Civil Penalty issued on April 27, 1987.

Subsequently, in conversations with NRC personnel in 1988, the alleger, who no longer works at NMP-1, presented additional allegations based on his review of records and recalled conversations with fellow workers at the Nine Mile Point facility. The allegations were transmitted to Region I on April 25, 1989 and a Special Team Inspection (STI) was planned to address the concerns. On May 16, 1989, the STI team leader reviewed NRC records of the 1988 discussions and reviewed the specific allegations with the applicable NRC personnel to better understand the issues and to confirm that no additional technical concerns existed. These issues subsequently formed the scope of the reviews conducted by this Special Team Inspection.

In addition to the NRC efforts, the alleger had contacted NMPC in 1988 regarding safety concerns. An NMPC Security Department investigator traveled to Florida in July 1988 to discuss these concerns with the alleger and to review taped conversations the alleger possessed. At this point NMPC became aware of some of the four additional allegations, which were expressed to the NRC later in 1988, and subsequently evaluated them to determine whether there was any adverse safety impact.

3. REVIEW OF ALLEGATIONS

All of the additional allegations involve issues at Nine Mile Point Unit 1. The team's review of these allegations is documented below, including the allegation, the NMPC evaluation (if applicable), the NRC STI review and findings, and a conclusion for each allegation.

3.1 HPCI Pump Switch Calibration

Allegation:

The High Pressure Coolant Injection (HPCI) pump oil switches are not adequately calibrated for cold starting conditions; therefore, the pumps cannot be relied upon to start during an emergency.

During the June-July 1986 startup, the second HPCI pump failed to start on several occasions, and the reactor had to be scrammed. The I&C supervisor ordered an I&C technician to go down and quickly recalibrate the HPCI pump oil switch without using a procedure, so the reactor could be restarted.

This problem still remains and recommendations to fix the problem have been ignored.

NMPC Evaluation:

NMPC was not aware of this allegation, although a related issue was identified and resolved by NMPC.

Review and Findings:

At NMP-1 there is not a separate HPCI system as exists at later designs of boiling water reactors, the HPCI represents a mode of operation of the two motor-driven feedwater pumps, one of which is normally operating to provide feedwater. The third feedwater pump with the largest capacity is powered off of the turbine-generator shaft.

The inspector interviewed an I&C technician (identified by the alleger) who originally had identified the HPCI pump lube oil switch concern. The technician was unaware of any HPCI problems in June-July 1986. His concern stemmed from an August 19, 1985 trip of the No. 11 Reactor Feedwater Pump (RFP) from low lube oil pressure following a HPCI initiation signal after a reactor scram. After the RFP trip, he was instructed to calibrate two lube oil switches, the HPCI auxiliary oil pump switch (63Q-1) and the HPCI feedwater pump start permissive switch (63Q-2). (The auxiliary oil pump switch protects the oil pump from damaging itself, while the feedwater pump permissive switch prevents the feedwater pump from starting and running unless there is sufficient oil pressure to properly lubricate the feedwater pump.) He found the setpoints within tolerance for the auxiliary oil pump switch (63Q-1) but out of tolerance for the feedwater pump start permissive switch (63Q-2). He adjusted the setpoints for 63Q-2 and tightened a loose terminal screw on a switch terminal block. The calibrations were documented on an Instrument Calibration Report; however, at that time a procedure for this calibration did not exist since the calibration was considered within the skills of a journeyman technician.

The technician stated that he subsequently talked with the I&C supervisor concerning whether it was acceptable to calibrate the switches when the lube oil was hot (normal operating temperature) and whether a previous hot calibration might have caused the out-of-calibration setpoints. The supervisor explained that it was preferable for the lube oil to be cold during the switch calibration, but that oil temperature would not affect the acceptability of the calibration. Further, the feedwater pump ran less than fifteen seconds before it tripped; therefore, the increase in lube oil temperature was insignificant. At the conclusion of that discussion, the I&C technician was satisfied that his concern had been properly addressed.

The inspector evaluated whether the calibration temperature could have affected the operability of the Mercoid pressure switch. The switch utilizes a coiled tube which deflects in response to pressure. This switch type responds properly to various fluids, e.g., oil, water, air, etc., and the temperature has a negligible effect on the tube's response. Further, the temperature range that the switch would have experienced (60 deg F to 160 deg F) was within the acceptable range for the switch. Accordingly, the inspector concluded that the I&C supervisor's previous explanation that calibration temperature would not have affected the operability of the pressure switch had been technically correct.

The inspector reviewed Licensee Event Report (LER) 85-14, the post-trip review of the August 19, 1985 reactor scram, and the applicable Instrument Calibration Reports and found them to be consistent with the above. LER 85-14 states that the No. 11 RFP "tripped on low oil pressure due to either a loose wire on the oil pressure switch or the switch being out-of-calibration".

The inspector reviewed all LERs from 1985 and 1986 and found that there were no failures of either HPCI feedwater pump in 1986 and that there were two other HPCI failures in 1985, unrelated to oil switches. Specifically, on November 1, 1985, No. 12 RFP started on a HPCI initiation signal, then was manually tripped by operators due to failure of No. 12 Flow Control Valve. When operators subsequently attempted to restart No. 12 RFP, it would not start due to failure of a timer associated with the HPCI start permissive. There were no occurrences of HPCI feedwater pump failures in June-July 1986. The inspector reviewed the control room logs from June and July 1986 and found no HPCI failures.

Numerous successful HPCI feedwater pump starts from cold conditions occurred in 1985 and 1986, including August 12, 1985, March 8, 1986, June 15, 1986, twice on June 18, 1986, and August 3, 1986. A records review of both motor-driven feedwater pumps from 1985 to the present indicated that no lube oil switches have been replaced and when recalibrated, the switches were found to be within proper tolerances.

The inspector noted that administrative procedures in 1985 required the use of a Work Request to control maintenance activities. Neither the inspector nor NMPC could find any record of a Work Request issued to administratively control the August 19, 1985 switch calibrations. This instance of a lack of a Work Request represented a violation of administrative procedures. Based on the minimal safety significance and the intervening time period, this violation is not being cited in accordance with the criteria specified in Section V.G. of the NRC Enforcement Policy. (NCV 50-220/89-16-01)

The inspector concluded that the 1985 calibrations performed without a specific calibration procedure had been acceptable, in that it was within the skills of a journeyman technician. The inspector noted that NMPC currently has procedure N1-ICP-R-029-002, Feedwater Pump #11 Instrument Calibration of RFW Pump Oil Pressure Instrumentation, to calibrate the

HPCI pump lube oil switches. The inspector found that both the 1985 calibration method (hand operated pump) and the current method (bottled gas) are acceptable and would not be affected by changes in lube oil temperature.

Conclusions:

The team concluded that the allegation was unsubstantiated, in that there were no HPCI problems in June or July 1986. The team found that an issue had been raised by an I&C technician concerning the calibration of HPCI oil switches on August 19, 1985. The technician's concern was subsequently resolved, the switches function properly regardless of the calibration temperature, and the HPCI pumps have repeatedly demonstrated the ability to start when cold. The team concluded that the failure to use a Work Request to control the August 1985 calibrations represented a non-cited violation.

3.2 Drywell Fire

Allegation:

There was a fire in the drywell on or about April 27, 1986, that should have been reported to the NRC but was not. The fire was witnessed by another I&C technician and was documented in the I&C log. The fire involved welding in the drywell and was not immediately extinguished, because neither a fire watch nor a fire extinguisher were at the welding location.

NMPC Evaluation:

In July 1988 the alleger informed an NMPC investigator of his concern regarding an April 27, 1986 fire in the drywell. Based on this information, the Security Department requested that the NMPC Fire Department investigate any possible fires in the drywell during the 1986 outage. The results of that review were documented in an internal memo dated August 5, 1988, from the Unit 1 fire protection supervisor to the NMPC investigator. NMPC determined that there had been the following three fires in the drywell during the 1986 outage.

- April 17 - Smoke and burning rags were found in the drywell and extinguished.
- April 26 - Weld slag dropped between the reactor vessel and the shield wall and ignited gloves, protective clothing and rags. This fire was extinguished by NMPC Fire Department personnel.
- April 27 - Weld slag dropped onto insulation and nylon strapping, which caught on fire and was extinguished by NMPC Fire Department personnel.

NMPC evaluation of these fires concluded that they were not reportable since they did not exceed the ten minute duration specified in emergency planning procedures that would have required the declaration of an Unusual Event and the resultant reporting to the NRC.

NMPC Security had subsequently informed the Nine Mile Point resident inspectors of this allegation after they had talked to the alleger. (A team member who was a resident inspector at Nine Mile Point in 1988 recalled being informed that NMPC Security was reviewing this allegation.)

Review and Findings:

The inspector interviewed the I&C technician (identified by the alleger) who completed the I&C log entry which documented the April 27 "Time out due to drywell fire". The technician said that he was outside the drywell when a contractor came out looking for an extinguisher. The technician notified the control room and within several minutes personnel responded to the event.

The inspector reviewed the NMPC investigation, which concluded that the three fires were properly handled in accordance with Fire Department Procedure 4 and Emergency Planning Procedure 2, which specifies that fires that exceed ten minutes be declared as Unusual Events. At the time of the fires the unit was in cold shutdown. Further, no safety-related equipment was involved in any of the fires. The inspector verified that each fire was documented in Senior Shift Supervisor (SSS)/Chief Shift Operator (CSO) and Fire Department logs and that no fire was documented as having exceeded the ten minute limit. Neither NMPC nor NRC identified any record of a formal NRC notification or report. However, the inspector could not identify any NRC or NMPC requirement that formal notification or reporting to the NRC should have occurred for the above fires. Also, the inspector judged that the technical significance of the fires was minimal based on the lack of any safety-related equipment being involved.

The inspector found that contractors generally provide their own fire watches. In the case of the April 27 fire, it appeared that the fire watch in the drywell had to leave the drywell to obtain a fire extinguisher or that the weld slag had dropped down beyond the view of the fire watch. The inspector concluded, based upon the I&C technican's statements, that a fire extinguisher was not available as required by NMPC administrative procedures regarding fire watches. However, this procedure violation by itself was not reportable to NRC. In a discussion with the inspector, the SSS who had been on duty noted that he had discussed this issue with the Fire Department and contractor personnel and stressed the need for better control over welding operations.

Conclusions:

The team concluded that there were fires in the drywell in April 1986. The team concluded that the fact that the fires were not reported is also true, however, there is no regulatory requirement that required such a report in these instances. The team concluded that the safety significance of the drywell fires was minimal in that no safety related equipment was involved and the fires were promptly put out. Accordingly, the team concluded the allegation that an April 1986 drywell fire should have been reported to the NRC was unsubstantiated. However, the staff concludes that three fires in ten days in the drywell indicates a need for better attention to detail and formality in control of work which has the potential to cause fires. The SSS informal discussion with the Fire Department and contractor personnel to better control welding appears to have been effective in this instance.

3.3 Monthly Operating Report

Allegation:

Monthly Operating Reports sent to NRC for Nine Mile Point Unit 1 have been inaccurate in that NMPC intentionally omitted Local Power Range Monitor (LPRM) connector maintenance from the NMP-1 Monthly Operating Reports for April 1986 through July 1986 because NMPC knew that the LPRM work was in violation of procedures.

NMPC Evaluation:

NMPC was not aware of this allegation.

Review and Findings:

To establish the facts associated with the allegation, the inspector reviewed a listing of work requests generated by the work tracking system and the Monthly Operating Reports for the subject period. The listing showed that 18 work requests had involved LPRM connectors; 9 were classified as safety-related and 9 were classified as nonsafety-related. One of the two work requests completed in May was included in the monthly report, and two of the seven work requests completed in July were included in the monthly report. The inspector noted that the July report was issued on August 1, 1986, which was after the time when the alleger's LPRM connector concerns were generally known to NMPC management and NRC (the alleger had detailed his concerns on July 15, 1986 and July 22, 1986, respectively). Accordingly, there appeared to be no incentive to omit LPRM work requests at that point. None of the nonsafety-related LPRM work requests were included in the monthly reports.

In discussions with the inspector the I&C supervisor during this period stated that the list of completed safety-related work requests included in the monthly reports was prepared by the clerical staff in the maintenance organization from the data base information available in the computer. The supervisor noted that nonsafety-related work requests were not listed in the monthly reports and that some LPRM connectors had been classified as nonsafety-related. The staff member who prepared the subject monthly reports was questioned but could not recall why certain completed maintenance work was not listed. The inspector concluded that the work requests listed 5rin monthly reports were determined by clerical personnel with little supervisory guidance or review and that the omissions were most likely unintentional oversights. The inspector concluded that there was no evidence to suggest that NMPC intentionally omitted the work requests.

The inspector reviewed NMP-1 Technical Specification 6.9.1.c., which specifies that "operating statistics and shutdown experience" be reported monthly, and noted that it does not specifically mention maintenance. The inspector could not identify any regulatory requirement or NMPC commitment which necessitated monthly reporting of completed maintenance work. Further, the inspector concluded that the listing of work requests currently included in the monthly reports served little purpose as the full records of completed maintenance are routinely available to NRC inspectors.

In discussions with the inspector, NMPC personnel were uncertain why maintenance records have been included in the monthly reports. Based on the negligible benefit and the lack of any requirement to report completed maintenance, NMPC stated that it would evaluate discontinuing this listing in future monthly reports.

The allegation that LPRM connector work during this period was performed in violation of procedures was previously substantiated in Inspection Report 50-220/86-17.

Conclusions:

Although the team concluded that certain completed 1986 LPRM maintenance work was not reported in the Monthly Operating Reports, the team did not identify any regulatory requirement or NMPC commitment for such monthly maintenance reporting. The team concluded because NRC had knowledge of the improper LPRM work before the July 1986 monthly report was submitted that the work requests missing from the monthly report did not represent a safety concern and that the alleged intentional omission could not be substantiated.

3.4 Illegal Drug Use

Background on Allegations:

The alleger provided specific information on eight individuals (labeled A through H in this report) and two general statements regarding alleged illegal drug usage. The alleger also claimed that the NMPC drug testing program had not been properly implemented based upon his knowledge that he and others were never tested. Due to the nature of the allegations, the issues were provided to NMPC and the team's inspection largely consisted of a review of the NMPC investigations.

The team determined that based on an anonymous allegation received in April 1988, the NMPC Security Department had previously investigated illegal drug use by Unit 2 I&C technicians (some of which worked at Unit 1), including extended visual surveillance and the use of drug sensitive dogs. During this investigation, several people were questioned and were requested to submit to drug testing. Three individuals (Mr. A, Mr. E and Mr. G) tested positive for the presence of cannabinoids (which indicates use of marijuana). NMPC reviewed the work performed by these three individuals and concluded that it had been acceptable. Additionally, Mr. G was apprehended in the parking lot with marijuana in his vehicle and was subsequently fired. Site access for Mr. A and Mr. E was initially revoked, until they enrolled in NMPC's employee assistance program (EAP). This program allows the employees to return to work following counseling and negative results from subsequent drug testing. After returning to work, these individuals are subjected to random drug testing at intervals not to exceed three months for a period of two years. Also, Mr. F was interviewed due to his association with Mr. G, but no conclusive findings resulted.

On May 12, 1988, the alleger again contacted NMPC regarding a tape recording of discussions between Mr. D and the alleger, in which use of drugs by Mr. D, Mr. F, and Mr. G at a party at Mr. G's house in 1986 was discussed. Subsequently, in July 1988 NMPC obtained a copy of the tape. At that time Mr. G had been fired and Mr. F had been interviewed. NMPC decided not to interview Mr. D based on the two year old information provided.

Additional NMPC evaluations occurred during the inspection, including security investigator interviews of Mr. B, Mr. C, and Mr. D.

The allegations received by the NRC are discussed separately below, and an overall conclusion is presented at the end of the section.

Background on NMPC Fitness for Duty Program:

The NMPC Fitness for Duty Program in effect in 1986, the period of the alleged drug activities, was revised on April 1, 1987 to the current program. This program is attached, including a comparison of drug testing under the previous program and the current program. It should be noted that the proposed new annual drug testing for "all employees at the nuclear site, who are required to have physical examinations" was never implemented due to legal challenges. Although there were no NRC requirements for fitness for duty programs, the revised program was reviewed by the NRC staff in July 1987 as part of the issuance of the full power license for Nine Mile Point Unit 2 and was found to be adequate.

The NMPC Fitness for Duty Program was under revision during the inspection due to recently issued NRC regulations. Specifically, on April 27, 1989, the NRC approved 10 CFR Part 26, Fitness for Duty Programs, to be effective on July 7, 1989. The new regulations include random, unannounced drug testing requirements, for which licensee programs are to be implemented within 180 days. Accordingly, NMPC was proceeding with the contracts and union negotiations necessary to meet the new requirements.

3.4.1 Allegation:

Drugs were used by I&C technicians A and B at a party at Mr. A's home during March or April of 1986. Mr. C, a supervisor, saw Mr. A and B smoking marijuana, but did not say anything.

NMPC Evaluation:

NMPC was not aware of this allegation. However, Mr. A had been investigated in 1988. At that time he had a positive test for drugs and enrolled in the NMPC EAP.

Mr. B was interviewed by NMPC Security on May 24, 1989 in relation to this allegation. Mr. B denied any knowledge of this event and denied ever having used marijuana. Additionally, Mr. B had been subjected to a pre-promotion drug test in January 1989 and the results were acceptable.

NMPC discussed this allegation with Mr. C on May 25, 1989. Mr. C recalled an incident in which he and the alleger were at Mr. A's house one morning after work; however, he stated that he never saw any individuals using drugs nor was he aware of any drug use by I&C technicians (see allegation 3.4.6 below). NMPC Security noted that Mr. C had been a very credible witness during previous investigations.

Facts Established by Team:

Mr. A had a positive drug test in 1988, and Mr. B had a negative drug test in January 1989.

3.4.2 Allegation:

After a long, offsite lunch break in March or April 1985, the alleger observed Mr. D and E to be glassy eyed, and Mr. D told the alleger they had smoked dope.

NMPC Evaluation:

NMPC was not aware of this allegation.

NMPC Security questioned Mr. D on May 25, 1989. Mr. D denied ever having used marijuana during lunch breaks and stated that he no longer used marijuana, although he admitted to using it while he was in college in the late 1970s.

During the drug investigation performed in April 1988, Mr. E had a positive test for drugs, enrolled in the EAP, and continues to perform duties on site.

Review and Findings:

An inspector observed Mr. E's performance during several surveillance tests and found it to be adequate.

Facts Established by Team:

Mr. E had a positive drug test in 1988.

3.4.3 Allegation:

In a taped conversation between the alleger and Mr. D, Mr. D stated that Mr. D, Mr. F and Mr. G had been involved in drug use.

NMPC Evaluation:

NMPC had received a copy of the tape in July 1988. Mr. G had already been fired when the alleger provided the tape. Mr. F had not previously been tested due to insufficient cause; however, he had been questioned during NMPC's drug investigation in April 1988 with no conclusive results. NMPC did not test Mr. D on the basis that the information was dated (greater than two years old) and on counsel from their Employee Relations personnel. When questioned on May 25, 1989, Mr. D had no recollection of making the statements recorded on the tape and denied that he or the others used drugs.

Review and Findings:

The inspectors reviewed a copy of the transcript of the tape.

Facts Established by Team:

The team confirmed that the tape recording existed and that in it Mr. D discussed drug use. Also, Mr. G had a positive drug test in 1988 and had been fired for drug possession on NMPC property.

3.4.4 Allegation:

In 1984 Mr. H, the I&C superintendent (since deceased), told the alleger that cocaine use by NMPC management was widespread.

NMPC Evaluation:

NMPC was not aware of this allegation.

Security personnel revealed that they have never received any other allegations related to cocaine use by NMPC personnel. Additionally, Security questioned an I&C supervisor and several I&C technicians during the inspection, and none of them had any knowledge of cocaine use by NMPC managers nor of any rumors of cocaine use. Based on the death of the superintendent and the lack of specifics, NMPC did not plan to evaluate this allegation further.

Facts Established by Team:

Mr. H died in 1985 of cancer.

3.4.5 Allegation:

The NMPC drug testing program was not carried out in that the alleger should have been drug tested while employed at Nine Mile Point from October 1984 to July 1986 and was not, and he was not aware of any Operations or I&C personnel who were drug tested.

NMPC Evaluation:

NMPC was not aware of this allegation.

The alleger was pre-employment drug tested on September 10, 1984. During the employment of the alleger, a random/periodic drug testing program had not been implemented at Nine Mile Point, although various proposals had been discussed between management and union representatives. During this period all nuclear employees were drug tested prior to employment and were subject to drug tests if appearing unfit for duty. Accordingly, Operations and I&C personnel would have been tested only if the above conditions applied.

Facts Established by Team:

The team confirmed that no random or periodic drug testing was performed on the alleger. NMPC policy did not require random or periodic testing (outside of EAP) of any employees during the alleger's employment and was not required by NRC regulations to do so. A pre-employment drug test of the alleger was performed in accordance with NMPC's program at the time.

3.4.5 Allegation:

I&C employees routinely attended parties where drugs were used.

NMPC Evaluation:

NMPC was not aware of this allegation.

During the interviews discussed above, NMPC investigators questioned several I&C technicians regarding drug use, and they reported no knowledge of drug use by other I&C technicians. NMPC did not plan to pursue this allegation further based on its general nature, the lack of specifics, and drug testing to be implemented in response to recent NRC fitness for duty rulemaking.

Facts Established by Team:

The previous investigations did find three I&C technicians who tested positive for drugs.

Overall Conclusion on Illegal Drug Use:

NMPC had investigated illegal drug use based on an anonymous allegation in April 1988 and the taped conversation received from the alleger in July 1988. The following conclusions could be made relative to the eight individuals referenced in the current allegations, based on the NMPC investigations in 1988 and during the inspection:

- One individual (G) tested positive for drugs and was later fired for drug possession on NMPC property.

- Two individuals (A&E) tested positive for drugs and entered the employee assistance program. They have returned to work onsite and have passed continuing random drug tests.

- Three (B, D and F) individuals were not drug tested during the investigation. However, only one individual (D) was implicated at that time and NMPC concluded that there was insufficient cause to require a drug test. One (B) of these individuals was subsequently drug tested in 1989 prior to a promotion and passed the test. All three individuals have been interviewed and denied using drugs.

- Two supervisors (C and H) were alleged to be aware of drug use. One (C) denied any such knowledge, and the other (H) died in 1985 of cancer.

The team did not attempt to directly investigate the drug allegations. In its investigations NMPC was unable to directly substantiate any of the alleger's specific drug allegations; however, as noted above, three I&C technicians had positive drug tests as a result of followup to the anonymous allegation of April 1988. The performance of these three technicians was reviewed by NMPC and found to be acceptable.

The team concluded that three of the six individuals alleged to have used drugs in 1986 subsequently tested positive during the 1988 investigation, substantiating, in part, that drugs were likely used and that the Fitness for Duty Program in effect at that time did not detect their use. Further, the team concluded that NMPC had addressed the drug allegations consistent with the NMPC Fitness for Duty Program, which met existing NRC policy. However, this program will be upgraded to confirm to the new 10 CFR Part 26, including random drug testing, and will be the subject of future inspections.

The allegation regarding NMPC not carrying out their drug testing program, due to lack of random or periodic drug tests, was apparently based on the false premise that such testing was required. In fact, NMPC did not have such a program and was not required to do such testing.

Regarding the general allegations of NMPC managers using cocaine and I&C technicians at parties using drugs, the team concluded that the lack of specific information and the death of the I&C superintendent prevented a meaningful investigation by NMPC and that drug testing to be implemented as part of the recent rule on fitness for duty would be the best method for determining if these allegations have merit.

The team concluded that NMPC had performed an adequate investigation of the drug allegations received in 1988 and those recently provided by the NRC.

4. CONCLUSIONS

The team concluded that while specific facts in the allegation on HPCI, a drywell fire, and Monthly Operating Reports were in part substantiated, and with one exception did not constitute violations of NRC requirements. The NRC concludes that weaknesses in work control associated with HPCI switch calibration and welding in the drywell are additional examples of the failure of NMPC in 1986 to aggressively identify and correct problems.

The NRC is concerned that the NMPC Fitness for Duty Program, implemented pursuant to the NRC's policy statement, has not been effective in detecting or determining illegal drug use. The team found that three of six individuals alleged to have used illegal drugs in 1986 subsequently tested positive during NMPC's 1988 investigation, substantiating in part the allegation that illegal drugs were likely used and that NMPC's Fitness for Duty Program in effect at the time did not detect their use. The team concluded that NMPC's investigations in 1988 of illegal drug use by NMPC personnel and the resultant actions appeared consistent with the NMPC Fitness for Duty Program as revised in April 1987. The Fitness for Duty Program is currently being upgraded to meet NRC's new rule on Fitness for Duty (10 CFR Part 26) and will be the subject of subsequent inspections.

These conclusions were provided to NMPC management during the inspection and at an exit meeting conducted on May 25, 1989.

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NIAGARA MOHAWK POWER CORPORATION

NIAGARA MOHAWK

300 ERIE BOULEVARD WEST
SYRACUSE, N.Y. 13202

WILLIAM J. DONLON
PRESIDENT

March, 1987

To: All Employees

Niagara Mohawk has a continuing concern and responsibility to provide a safe and healthy work place and an obligation to ensure that no employee endangers the safety of others. In today's society with the notoriety surrounding widespread use of illegal drugs, it is imperative that we maintain a drug-free environment within our work force. A drug-free environment is in the best interest of all of us as employees and assures our co-workers, families, customers and the general public that we are addressing this problem in a positive light.

To this end, we have revised our Alcohol and Drug Abuse Policies including our Fitness for Duty Program. Effective April 1, 1987, it will be the responsibility of every employee to notify the Company of any suspected instances of use, possession or being under the influence of alcoholic beverages or illegal drugs on Company property. In addition, employees with nuclear responsibility will not be allowed to continue employment in any nuclear-related area pending full investigation of any illegal drug-related occurrence.

Along with these revisions to the policies and, again, effective April 1, 1987, employees will be subject to alcohol/drug screening/testing under the following situations:

- Any employee involved in an occupational accident causing personal injury and/or damage to equipment where human error appears to be the cause;
- Any employee subject to management pre-promotional physical examination will be screened for drugs;
- All employees at the nuclear site who are required to have physical examinations will be screened for drugs on an annual basis.

The above is in addition to our present procedure of alcohol/drug screening/testing, whichever is applicable, for all prospective applicants and any employee deemed to be unfit in the performance of duties as a result of alcohol/drugs.

In addition, the current Fitness for Duty Program has been revised to include a procedure that provides for rehabilitation in instances where there appears to be an alcohol and/or drug abuse problem. We feel that this is a positive direction which will provide our employees continuing support in dealing with these problems.

[illegible]

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NIAGARA MOHAWK POWER CORPORATION

COMPANY POLICY

DRUG ABUSE

Generally speaking, employees of the Company are visible and active members of the communities in which they live and work. They are quite naturally identified with the Company and are expected to represent the Company in a responsible manner. The use of illegal drugs by employees is inconsistent with the objectives of operating the Company in a safe and efficient manner.

Therefore, the use, possession, sale or purchase of illegal drugs (defined as any drug or drug-like substance whose sale, use, purchase or possession is unlawful) while on the job or on Company property is prohibited. Any illegal substances will be turned over to the appropriate law enforcement agency and may result in criminal prosecution. Additionally, no employee shall report to work while under the influence of illegal drugs.

Off-the-job illegal drug use which adversely affects an employee's job performance or which jeopardizes the safety of other employees or Company equipment will be addressed.

In addition, every employee has the responsibility of immediately notifying their supervisor of any suspected instances of use, possession or being under the influence of such substances which occur on Company property.

Employees who are arrested for off-the-job drug involvement will be considered to be in violation of Company policy. In deciding what action to take, the Company will consider the nature of the charges, the employee's present job assignment, the employee's record with the Company and other factors pertinent to the impact of the employee's arrest upon the conduct of the Company business. In any instance, employees with nuclear responsibilities will not be allowed to continue employment in any nuclear-related area pending full investigation of the incident.

Abrogation of this Policy may result in disciplinary action up to and including discharge.

Assistance in dealing with drug-related problems is available through the Employee Assistance Program. Employees who voluntarily request assistance in dealing with drug problems may participate in the EAP without jeopardizing their continued employment with the Company, providing they follow the prescribed course of treatment and refrain from further involvement with drugs.

Prescribed medical treatment with a controlled substance should be reported to the supervisor when an employee's ability to perform the job assignment in a safe manner is affected. The use of controlled substances as part of a prescribed medical treatment program is naturally not grounds for disciplinary action. However, it is important for the Company to know such use is occurring as a temporary job reassignment may be necessary.

John G. Haehl, Jr.
Chairman of the Board/Chief Executive Officer

William J. Donlon
President

ISSUED: December 15, 1978
REVISED: January 1984
April 1, 1987

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NIAGARA MOHAWK POWER CORPORATION

COMPANY POLICY

ALCOHOL ABUSE

Generally speaking, employees of the Company are visible and active members of the communities in which they live and work. They are quite naturally identified with the Company and are expected to represent the Company in a responsible fashion. The abuse of alcoholic beverages by employees is inconsistent with the objectives of operating the Company in a safe and efficient manner.

Therefore, no employee shall consume alcoholic beverages during working hours (regular or overtime) and during meal hours (noon, overtime or emergency call-out). Additionally, no employee shall report to work under the influence of alcoholic beverages or possess alcoholic beverages on Company property. When the use of alcohol adversely affects an employee's job performance, it is imperative that the Company address the situation.

In addition, every employee has the responsibility of immediately notifying their supervisor of any suspected instances of use, possession or being under the influence of alcoholic beverages which occur on Company property.

Abrogation of this Policy may result in disciplinary action up to and including discharge.

Assistance in handling alcohol-related problems is available through the Employee Assistance Program. Employees who voluntarily request assistance in dealing with alcohol problems may participate in the EAP without jeopardizing their continued employment with the Company, providing they follow the prescribed course of treatment and their work performance is acceptable.

John C. Haehl, Jr.
Chairman of the Board/Chief Executive Officer

William J. Donlon
President

ISSUED: October 15, 1975
REVISED: April 1, 1987

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NIAGARA MOHAWK POWER CORPORATION

EMPLOYEE ASSISTANCE PROGRAM

The Employee Assistance Program (EAP) provides confidential professional guidance and counseling to help employees resolve personal problems which adversely affect job performance. It is designed to provide assistance to employees and their families in handling a wide range of personal problems including alcohol and/or drug dependency or abuse. It is the Company's intent that each employee has the opportunity to achieve full job potential and where personal problems interfere with this goal, the EAP can be of valuable assistance.

Employees may obtain professional assistance through the Employee Assistance Program in the following ways - self referral (including family referral), supervisory referral, union referral, or medical referral. In addition, employees should be aware that the EAP Coordinator will be available for assistance and guidance in obtaining help for a co-worker who may be having personal or job performance problems.

Through the EAP, employees receive confidential help in assessing their problems and where appropriate, referrals to outside resources for treatment and assistance. If employees are referred to outside resources such as doctors, psychologists, hospitals or clinics, the employees will be responsible for charges in excess of those covered under the Company's Medical Plan.

Employees are strongly urged to contact the EAP Coordinator before alcohol, drug or personal problems lead to disciplinary action. Participation in the EAP will not prevent or lessen disciplinary action for poor job performance or violation of Company policy. However, employees who voluntarily request assistance in dealing with alcohol and/or drug problems may participate in the EAP without jeopardizing their continued employment with the Company, providing they follow the prescribed course of treatment and refrain from further involvement with alcohol and/or drugs.

This confidential Employee Assistance Program is available through the Company EAP Coordinator. Referrals may be made by calling the EAP Coordinator at (315) 428-5901. If the EAP Coordinator is out of the office, your confidential call will be recorded and a response provided as soon as possible. The EAP Coordinator's office is located at Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, New York 13202.

Consultation with the EAP Coordinator is not intended to preclude the present advice and counseling provided by staff members of the Employee Relations Department.

ISSUED: January 1984
REVISED: April 1, 1987

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NIAGARA MOHAWK POWER CORPORATION

EMPLOYEE GUIDELINES REGARDING COMPANY ALCOHOL/DRUG ABUSE POLICY - FITNESS FOR DUTY PROGRAM

These guidelines are for use by all employees to help make Niagara Mohawk a "drug-free" work place and to ensure added confidence that Niagara Mohawk employees comply with the Company's Alcohol Drug Abuse Policy.

1. Every employee has a responsibility to help keep Niagara Mohawk a "drug-free" Company.

2. Employees who are arrested for an alcohol or drug related offense off Company property should report the incident to their supervisor immediately. The matter will be reviewed with the Employee Relations Department prior to the employee reporting to work.

3. Employees who have a drug and/or alcohol problem are urged to voluntarily obtain professional assistance through the Employee Assistance Program.

4. Employees who have an alcohol/drug problem and who ask for help should be referred immediately to the Company's Employee Assistance Program. This request for assistance may not be used by an employee as a means of avoiding disciplinary action if such employee has violated the Company's Alcohol/Drug Abuse Policy, any other policy or safety rule.

5. Every employee has the responsibility for taking action whenever a co-worker appears to be having problems and seems to be impaired by the possible use of alcohol and/or drugs. Every employee has the responsibility of immediately notifying their supervisor of any suspected instances of use, possession or being under the influence of such substances which occur on Company property. In addition, employees should be aware that the EAP Coordinator will be available for assistance and guidance in obtaining help for a co-worker who may be having personal or job performance problems.

6. Whenever an employee's demonstrated judgment or performance seems to be impaired by the possible use of alcohol and/or drugs and the supervisor suspects the employee is "unfit for duty" the following action should be taken:

    a) At the request of the supervisor, the employee should explain why it appears that he/she may be unfit for duty. A bargaining unit employee may request a steward present.

    b) If the employee fails to explain his/her impaired condition to the supervisor's satisfaction, and it is still the supervisor's determination that alcohol and/or drugs may be involved, the employee will be taken by the supervisor or another management employee to the designated medical facility for alcohol and drug testing.

    c) The employee will be required to sign a Consent and Authorization Form prior to such alcohol and drug tests.

    d) Any employee who refuses to sign a Consent and Authorization Form will be considered in violation of the Fitness for Duty Program and will be disciplined accordingly.

7. Employees who find drugs or drug paraphernalia on Company property should report the incident to the Security Department, your supervisor and the Employee Relations Department. The Security Department will then advise as to the specific course of action to be followed.

JED: April 1, 1987

NIAGARA MOHAWK POWER CORPORATION

ALCOHOL/DRUG SCREENING/TESTING -

[illegible]

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ALCOHOL/DRUG SCREENING/TESTING

A. [illegible]

(1) All applicants, prior to employment, will be screened for drugs.

(2) Any employee who appears to be unfit for duty will be subject to alcohol/drug screening/testing.

B. [illegible]

(1) Any employee involved in an incident and accident causing personal injury and/or damage to equipment where human error appears to be a cause will be subject to post accident alcohol/drug screening/testing.

(2) Management preplacement physical examinations will include drug screening.

(3) All employees at the nuclear site, who are required to have physical examinations, will be required to be screened for drugs on an annual basis.

II. PROGRAM TEST RESULT CRITERIA

A. Alcohol

The "cutoff" for positive/negative presence of alcohol in the body will be .04% and over, of [illegible] of alcohol in blood alcohol content level.

B. Marijuana

The "cutoff" for the positive/negative presence of marijuana in the body will be 20 [illegible]. If positive, such result will be further analyzed.

C. Other Illegal Drugs

Any positive screening of illegal drugs shall be further analyzed.

III. CONSENT AND AUTHORIZATION FORMS/LETTERS

(1) Any employee who is subject to a Fitness for Duty or post accident alcohol/drug screening/testing will be required to sign a Consent and Authorization Form prior to such screening/testing.

(2) Any employee at the nuclear site who is required to have a physical examination will also be required to be screened for drugs on an annual basis and sign an Employee Consent and Authorization Letter prior to such drug screening, including documentation of any prescription drugs which may be in the system.

(3) Any employee refusing to sign a Consent and Authorization Form/Letter will be considered in violation of the Fitness for Duty Program and will be disciplined accordingly.

IV. REHABILITATION PROCEDURE

A. Fitness for Duty/Post Accident

(1) Any employee believed to be positive for either alcohol or drugs will be immediately suspended with pay.

(2) If any employee is found to be negative without alcohol/drugs in the system, the employee will be returned to work without loss of pay.

(3) An investigatory proceeding will be held in an expeditious manner. Where applicable, or Article XX processing will take place as soon as possible.

(4) If the Company, at its discretion, is satisfied that the employee was positive with drugs in the system, the employee will continue to be suspended, however, without pay, in accordance with the provisions of Paragraph C below. Further, the employee will be required to make contact with the Employee Assistance Program Coordinator or other source acceptable to the Company.

B. Drug Screening/Physical Testing

(1) Any employee found to be confirmed positive with drugs in the system will be immediately suspended without pay.

(2) An investigatory proceeding will be held in an expeditious manner. Where applicable, or Article XX processing will take place as soon as possible.

(3) If the Company, at its discretion, is satisfied that the employee was positive with drugs in the system, the employee will continue to be suspended, without pay in accordance with the provisions of Paragraph C below. Further, the employee will be required to make contact with the Employee Assistance Program Coordinator or other source acceptable to the Company.

C. General

(1) In the case of a positive confirmation, the employee will be suspended without pay for a minimum period of 14 calendar days and a maximum of 28 calendar days.

(2) If it is indicated that there is an abuse problem, the employee must follow the prescribed course of rehabilitation and will be required to furnish evidence of such course of rehabilitation to the Company.

(3) If the employee, upon re-examination by the Company on the 14th, 21st or 28th calendar day and is found to be completely negative of any alcohol/drugs in the system, such employee will be permitted to return to work on either the 15th, 22nd or 29th calendar day after initial completion of said suspension. However, return to work will only be made with assurances the employee is following the prescribed course of rehabilitation. No employee will be returned to the payroll until test results is negative.

(4) Any employee who does not test negative on alcohol/drugs in the system within 28 calendar days will be terminated.

(5) Any employee who after has been tested positive and has gone through a prescribed course of rehabilitation will be subject to [illegible] alcohol/drug screenings/testings for a two-year period and will be required to sign a [illegible] understanding.

(6) Any employee found positive during the two-year period following rehabilitation will be terminated.

ISSUED: April 1, 1987

BEST AVAILABLE COPY

[The nomination reference of Victor Stello, Jr. follows:]

NOMINATION REFERENCE
AS IN EXECUTIVE SESSION,
SENATE OF THE UNITED STATES,
July 24, 1989.

Ordered, That the following nomination be referred to the Committee on Armed Services:

Victor Stello, Jr., of Maryland, to be an Assistant Secretary of Energy (Defense Programs), vice Sylvester R. Foley, Jr., resigned.

[The biographical sketch of Victor Stello, Jr., which was transmitted to the committee at the time the nomination was referred, follows:]

BIOGRAPHICAL SKETCH OF VICTOR STELLO, JR.

Victor Stello was named Executive Director for Operations for the Nuclear Regulatory Commission on April 1, 1986, after serving as Acting Executive Director since January 3. He is the NRC's chief staff officer and is responsible for directing and coordinating the agency's operational and administrative activities and for the development of policy options for Commission consideration.

He previously had served, since November 2, 1981, as Deputy Executive Director for Regional Operations and Generic Requirements. In that post, he chaired the Generic Requirements Review Committee with responsibility for reviewing and recommending to the Executive Director for Operations approval or disapproval of requirements which the NRC staff believes should be imposed on one or more classes of power reactor licensees. He also was responsible to the Executive Director for Operations for the headquarters' direction of the NRC's five regional offices located in: King of Prussia, Pennsylvania; Atlanta, Georgia; Glen Ellyn, Illinois; Arlington, Texas; and Walnut Creek, California.

Prior to becoming Deputy Executive Director for Regional Operations and Generic Requirements, he had served, since June 1979, as Director for the Office of Inspection and Enforcement. In that post, he was responsible for managing and directing the agency's program that verifies licensee compliance with regulatory requirements and for taking enforcement action determined to be needed on the basis of the office's inspection efforts. Mr. Stello, with over 20 years of experience in various nuclear programs, played a major role as a senior NRC representative at Three Mile Island following the accident in Unit 2.

In 1988, President Ronald Reagan presented Mr. Stello with the Distinguished Rank Award, the highest honor of the Federal Government's Senior Executive Service. The award recognized his efforts at the NRC which have led to greatly improved inspection of the commercial nuclear industry, reduction in the regulatory burdens on utilities building and operating nuclear power plants without reductions in safety, and to nuclear industry initiatives to improve safety standards independent of Federal regulation. In 1980, his sustained superior accomplishments in the management of Federal programs, including his major contribution to the management of the events at TMI-2, earned him the Meritorious Executive Award as part of that year's Presidential Rank Awards for the Senior Executive Service.

Mr. Stello first joined the regulatory organization of the former Atomic Energy Commission in 1966 as a member of the licensing technical staff performing safety reviews of various reactor plants. When he was promoted in 1971 to branch chief of a boiling water reactor licensing branch, Mr. Stello was responsible for supervising and coordinating the safety evaluations for reactor plants under review for either construction permits or operating licenses.

As Chief of the reactor systems branch in 1972, Mr. Stello was primarily involved with the design of various reactor systems. He became Assistant Director for Reactor Safety in 1973, and, when NRC was established, became Director of the Division of Operating Reactors in 1976. In this position he was responsible for the review and evaluation of design and operational changes and experiences. In 1974, Mr. Stello received the Commission's Distinguished Service Award for his leadership and personal contributions to resolution of concerns associated with emergency core cooling of nuclear power plants.

From 1960 to 1965, Mr. Stello worked for the CANEL office of the Pratt and Whitney Aircraft Company in Middletown, Connecticut, where he participated in analyses of the high-temperature liquid-metal reactor systems proposed for use in aircraft and space applications. From 1965 to 1966, he worked in the East Hartford, Connecticut, offices of Pratt and Whitney on the study of advanced jet engine concepts for military and commercial applications.

Mr. Stello received both a bachelor of science and master of science degree in mechanical engineering from Bucknell University. He subsequently completed additional graduate work at the Rennselaer Polytechnic Institute. In addition, he is a member of the American Society for Mechanical Engineers.

Mr. Stello received both the Engineering Alumni Award for Outstanding Engineering and Engineering Residence Award by the Bucknell University on June 6, 1981. On July 1, 1981, the Outstanding Achievement Award was presented to Mr. Stello by the Federally Employed Women, Inc., for his contributions to the furtherance of women's goals.

[The Committee on Armed Services requires all individuals nominated from civilian life by the President to positions requiring the advice and consent of the Senate, and certain senior military officers as determined by the committee, to complete a form that details the biographical, financial, and other information of the nominee. The form executed by Victor Stello, Jr., in connection with this nomination, follows:]

UNITED STATES SENATE

COMMITTEE ON ARMED SERVICES

Room SR-228

Washington, DC 20510-6050

(202) 224-3871

COMMITTEE ON ARMED SERVICES FORM

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

INSTRUCTIONS TO THE NOMINEE: Complete all requested information. If more space is needed, use an additional sheet and cite the part of the form and the question number (i.e., A-9, B-4) to which the continuation of your answer applies.

PART A—BIOGRAPHICAL INFORMATION

INSTRUCTIONS TO THE NOMINEE: Biographical information furnished in this part of the form will be made available in committee offices for public inspection prior to the hearing and will also be published in any hearing record as well as made available to the public.

1. **Name:** (Include any former names used.)
Victor Stello, Jr.; Victor Joseph Stello, Jr.

2. **Position to which nominated:**
Assistant Secretary for Defense Programs, Department of Energy.

3. **Date of nomination:**
July 24, 1989.

4. **Address:** (List current place of residence and office addresses.)
[Nominee responded and the information is contained in the committee's executive files.]

5. **Date and place of birth:**
June 27, 1934, Keiser, Pennsylvania.

6. **Marital Status:** (Include maiden name of wife or husband's name.)
Married, wife's maiden name, Esther L. Malinoski.

7. **Names and ages of children:**
Lisa Stello, 30; Vanessa Flynn, 27; Victor Stello III, 25; Chester Stello, 21.

8. **Education:** List secondary and higher education institutions, dates attended, degree received and date degree granted.

Bucknell University, 1952 to 1958, B.S., Mechanical Engineering.

Bucknell University, 1958 to 1960, M.S., Mechanical Engineering.

Rennselaer Polytechnic Institute, 1960 to 1965.

9. **Employment record:** List all jobs held since college or in the last 10 years, whichever is less, including the title or description of job, name of employer, location of work, and dates of employment.

1975 to present, U.S. Nuclear Regulatory Commission.

1986 to 1989, Executive Director for Operations.

1981 to 1986, Deputy Executive Director for Regional Operations and Generic Requirements.

1979 to 1981, Director, Office of Inspection and Enforcement.

10. **Government experience:** List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments, other than those listed above.

1966 to 1975 U.S. Atomic Energy Commission.

Various technical and management positions dealing with regulation of commercial nuclear power plants.

11. **Business relationships:** List all positions currently held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

Partner in Salvo Adventurers—beach property, Salvo, North Carolina, family vacation property.

12. **Memberships:** List all memberships and offices currently held in professional, fraternal, scholarly, civic, business, charitable and other organizations.

ASME, 1958 to present.

Loyal Order of Moose, 1957 to present.

Knights of Columbus, 1967 to present.

Isaac Walton League, 1982 to present.

13. **Political affiliations and activities:**

(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

None.

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 5 years.

None.

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $100 or more for the past 5 years.

None.

14. **Honors and Awards:** List all scholarships, fellowships, honorary society memberships, military medals, and any other special recognitions for outstanding service or achievements.

1988, Presidential Distinguished Rank Award.

1981, Outstanding Achievement Award by the Federally Employed Women, Inc.

1981, Engineering Alumni Award for Outstanding Engineering and Engineering Residence Award from Bucknell University.

1980, Presidential Meritorious Executive Award.

1974, Distinguished Service Award from U.S. Atomic Energy Commission.

15. **Published writings:** List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.

Numerous speeches and technical papers for various professional journals and association meetings.

16. **Speeches:** Provide the committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated.

[Contained in committee files.]

17. **Selection:**

(a) Do you know why you were chosen for this nomination by the President?

Yes, Secretary Watkins asked me to consider the appointment.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

Twenty-nine years of work in various fields of nuclear reactor safety, research and management.

18. **Commitment to testify before Senate committees:** Do you agree, if confirmed, to respond to requests to appear and testify before any duly constituted committee of the Senate?

Yes.

COMMITTEE ON ARMED SERVICES FORM

FINANCIAL AND OTHER INFORMATION REQUESTED OF NOMINEES

INSTRUCTIONS TO THE NOMINEE: Information furnished in Parts B through F will be retained in the committee's executive files and will not be made available to the public unless specifically directed by the committee.

Name: Victor Stello, Jr.

PART B—FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all business connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

[Note: Nominee responded and the information is contained in the committee's executive files.]

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

[Note: Nominee responded and the information is contained in the committee's executive files.]

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?

[Note: Nominee responded and the information is contained in the committee's executive files.]

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

[Note: Nominee responded and the information is contained in the committee's executive files.]

5. Is your spouse employed and, if so, where?

[Note: Nominee responded and the information is contained in the committee's executive files.]

6. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

[Note: Nominee responded and the information is contained in the committee's executive files.]

PART C—POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers.

[Note: Nominee responded and the information is contained in the committee's executive files.]

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

[Note: Nominee responded and the information is contained in the committee's executive files.]

3. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

[Note: Nominee responded and the information is contained in the committee's executive files.]

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification

of any legislation or affecting the administration and execution of law or public policy.

[Note: Nominee responded and the information is contained in the committee's executive files.]

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.)

[Note: Nominee responded and the information is contained in the committee's executive files.]

6. Do you agree to provide to the committee any written opinions provided by the General Counsel of the agency to which you are nominated and by the Attorney General's office concerning potential conflicts of interest or any legal impediments to your serving in this position?

[Note: Nominee responded and the information is contained in the committee's executive files.]

PART D—LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

[Note: Nominee responded and the information is contained in the committee's executive files.]

2. Have you ever been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, country or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details.

[Note: Nominee responded and the information is contained in the committee's executive files.]

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

[Note: Nominee responded and the information is contained in the committee's executive files.]

4. Have you ever been convicted (including a plea of guilty or nolo contendere) of any criminal violation other than a minor traffic offense?

[Note: Nominee responded and the information is contained in the committee's executive files.]

5. Please advise the committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

[Note: Nominee responded and the information is contained in the committee's executive files.]

PART E—FOREIGN AFFILIATIONS

1. Have you or your spouse ever represented in any capacity (e.g., employee, attorney, business, or political adviser or consultant), with or without compensation, a foreign government or an entity controlled by a foreign government? If so, please fully describe such relationship.

[Note: Nominee responded and the information is contained in the committee's executive files.]

2. If you or your spouse has ever been formally associated with a law, accounting, public relations firm or other service organization, have any of your or your spouse's associates represented, in any capacity, with or without compensation, a foreign government or an entity controlled by a foreign government? If so, please fully describe such relationship.

[Note: Nominee responded and the information is contained in the committee's executive files.]

3. During the past 10 years have you or your spouse received any compensation from, or been involved in any financial or business transactions with, a foreign government or an entity controlled by a foreign government? If so, please furnish details.

[Note: Nominee responded and the information is contained in the committee's executive files.]

4. Have you or your spouse ever registered under the Foreign Agents Registration Act? If so, please furnish details.

[Note: Nominee responded and the information is contained in the committee's executive files.]

PART F—FINANCIAL DATA

All information requested under this heading must be provided for yourself, your spouse, and your dependents.

1. Describe the terms of any beneficial trust or blind trust of which you, your spouse, or your dependents may be a beneficiary. In the case of a blind trust, provide the name of the trustee(s) and a copy of the trust agreement.

[Note: Nominee responded and the information is contained in the committee's executive files.]

2. Provide a description of any fiduciary responsibility or power of attorney which you hold for or on behalf of any other person.

[Note: Nominee responded and the information is contained in the committee's executive files.]

3. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, executory contracts and other future benefits which you expect to derive from current or previous business relationships, professional services and firm memberships, employers, clients and customers.

[Note: Nominee responded and the information is contained in the committee's executive files.]

4. Have you filed a Federal income tax return for each of the past 10 years? If not, please explain.

[Note: Nominee responded and the information is contained in the committee's executive files.]

5. Have your taxes always been paid on time?

[Note: Nominee responded and the information is contained in the committee's executive files.]

6. Were all your taxes, Federal, State, and local, current (filed and paid) as of the date of your nomination?

[Note: Nominee responded and the information is contained in the committee's executive files.]

7. Has the Internal Revenue Service ever audited your Federal tax return? If so, what resulted from the audit?

[Note: Nominee responded and the information is contained in the committee's executive files.]

8. Have any tax liens, either Federal, State, or local, been filed against you or against any real property or personal property which you own either individually, jointly, or in partnership?

[Note: Nominee responded and the information is contained in the committee's executive files.]

(The committee may require that copies of your Federal income tax returns be provided to the committee. These documents will be made available only to Senators and the staff designated by the chairman. They will not be available for public inspection.)

SIGNATURE AND DATE

I hereby state that I have read and signed the foregoing Statement of Biographical and Financial Information and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

VICTOR STELLO, Jr.

This 5th day of May, 1989.

On April 24, 1990, the President notified the Senate that he was withdrawing the nomination of Mr. Victor Stello, Jr. to be the Assistant Secretary of Energy for Defense Programs.

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WITHDRAWAL

April 24, 1990

Nomination withdrawn from further consideration by the Senate:

The White House,

APR 19

To the

Senate of the United States.

I withdraw the nomination of

Victor Stello, Jr., of Maryland, to be an Assistant Secretary of Energy (Defense Programs), vice Sylvester R. Foley, Jr., resigned, which was sent to the Senate on July 24, 1989.

GEORGE BUSH

The Secretary of Energy
Washington, DC 20585

April 24, 1990

The Honorable Sam Nunn
Chairman
Committee on Armed Services
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Today, the President has accepted Victor Stello's request that his nomination to be Assistant Secretary for Defense Programs be withdrawn. Enclosed is a copy of Mr. Stello's letter to the President. It is my intention that Mr. Stello will continue to serve in a Civil Service career position as my Special Assistant for restart of Savannah River reactors and Rocky Flats plutonium production facilities.

Over the last ten months, your willingness to steer Mr. Stello's nomination through Committee in a forthright and fair manner has meant a great deal to me. I wanted to take this opportunity to thank you for your even-handed efforts in Mr. Stello's confirmation process.

Sincerely,

Jim Watkins

James D. Watkins
Admiral, U.S. Navy (Retired)

Enclosure

Department of Energy
Washington, DC 20585

April 20, 1990

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

Over a year ago I began serious discussions with Secretary of Energy, Admiral James Watkins, concerning the position of Assistant Secretary for Defense Programs in the Department of Energy. In July 1989 you forwarded my nomination for this position to the United States Senate for its consideration. For reasons that I will enumerate herein I must respectfully and regretfully request that my nomination be withdrawn.

I have spent the past 24 years of my professional life in the service of my country serving with the Atomic Energy Commission, the Nuclear Regulatory Commission, and most recently, with the Department of Energy. I am proud of my association with our great government. When Admiral Watkins first indicated his interest in my assuming the responsibility of Assistant Secretary for Defense Programs at the Department of Energy I considered it a singular honor and opportunity for an individual to rise from the professional ranks and become a Presidential appointee to be confirmed by the Senate. The proudest day of my life was the date you placed my name in nomination to become an integral part of Admiral Watkins' team, and I will always be most grateful and appreciative for that high honor.

My nomination has been before the Senate since July 1989. The Senate Armed Services Committee has conducted three hearings over the past ten months. Currently, it is my understanding that the Committee will not be in a position to further consider my nomination until it has reviewed the results of the Inspector General of the Nuclear Regulatory Commission's current investigative efforts. My experience over this past year has lead me to the conclusion that final action by the Senate on my nomination will not take place in the foreseeable future.

I came to the Department because I wanted to assist Admiral Watkins in the significant task before him to restore the viability of the nation's nuclear deterrent. I believe my background and expertise in nuclear reactors have made a difference in the progress the Department is making in the restart of these reactors. In my view, our country, the Secretary of Energy and you, Mr. President, require a confirmed individual in the position of Assistant Secretary for Defense Programs at the earliest opportunity. It has become clear to me that I cannot be that person. In my view, it is in the best interest of our country for you to identify another nominee for this critical position.

I would be remiss in not also bringing to your attention aspects of my personal health that also weigh on my decision. In January of this year I suffered a serious injury, and I have yet to fully recover. This accident has given me an opportunity to more sharply focus on those matters which I consider of significant personal importance.

Accordingly, I respectfully request that my nomination to be Assistant Secretary for Defense Programs at the Department of Energy be withdrawn.

Sincerely,

Victor Stello, Jr.
Principal Deputy Assistant
Secretary for Defense Programs

STATEMENT OF SENATOR SAM NUNN, CHAIRMAN AND SENATOR JOHN WARNER, RANKING MINORITY MEMBER SENATE ARMED SERVICES COMMITTEE ON THE WITHDRAWAL OF THE NOMINATION OF VICTOR STELLO TO BE ASSISTANT SECRETARY OF ENERGY FOR DEFENSE PROGRAMS

The Committee has been notified that President Bush has accepted the request of Mr. Victor Stello, Jr. that Mr. Stello's nomination to be Assistant Secretary of Energy for Defense Programs be withdrawn.

Throughout the nomination process, Mr. Stello has conducted himself with dignity under very difficult circumstances. The Committee is most appreciative of the cooperation we received from Mr. Stello and Secretary of Energy Watkins during these nomination proceedings.

The Committee on Armed Services conducted a detailed and thorough review of this nomination, as expeditiously as circumstances permitted. Mr. Stello was nominated on July 24, 1989. On October 27, we received his response to the Committee's questionnaire, and the balance of the required paperwork was submitted by the Executive Branch in mid-November. Public hearings were held on November 15 and 16, and on December 19. The Committee met in Executive session on November 17 and 20, 1989, and on January 25 and 31, 1990, and considered the complex factual and technical issues raised with respect to the nomination. The Committee received testimony from 20 witnesses, examined thousands of pages of documents, and developed detailed analyses of the issues.

On January 31, 1990, we announced that we would defer further action on the nomination pending completion of a relevant inquiry by the Inspector General of the Nuclear Regulatory Commission, an inquiry that has not been completed at this time. In light of the President's withdrawal of Mr. Stello's nomination, the Committee's proceedings on this nomination are completed.

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